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LEGISLATIVE HISTORY
S. 1147
Public Law 88-657

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INDEX AND SUMMARY OF S. 1147

Mar.	19, 1963	Sen. Randolph introduced and discussed S. 1147 which was referred to the Senate Public Works Committee. Print of bill and remarks of author.
June	18, 1964	Senate subcommittee approved S. 1147 for consideration by the full committee.
July	8, 1964	Senate committee reported S. 1147 with amendment. S. Report No. 1174. Print of bill and report.
July	21, 1964	Senate passed S. 1147 as reported.
July	22, 1964	S. 1147 was referred to the House Public Works Committee. Print of bill as referred.
Sept.	30, 1964	House committee reported S. 1147 without amendment. H. Report No. 1920. Print of bill and report.
Oct.	2, 1964	House passed S. 1147 without amendment.
Oct.	13, 1964	Approved: Public Law 88-657.

Hearings: S. 1147, Senate Public Works Committee.

DIGEST OF PUBLIC LAW 88-657

FOREST ROADS AND TRAILS SYSTEM.

Authorizes the Secretary of Agriculture to grant permanent or temporary easements for road rights-of-way over national forest lands and other lands administered by the Forest Service and over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it. Provides for termination of easements so granted with provision that if cancellation is to be for nonuse the owner must be notified and, if he requests, be given a hearing in accordance with rules and regulations of the Secretary. Authorizes the Secretary to provide for the acquisition, construction, and maintenance of forest development roads of maximum economy in harvesting timber and to meet the needs of other protection, management, and utilization purposes with appropriated funds, by requirements on purchasers of national forest timber and other products with provisions for amortization of road costs, by cooperation with public and private agencies or persons, or by a combination of these methods. Directs that all instruments affecting permanent interests in land executed pursuant to this act will be recorded in the county records and that copies of those affecting lands reserved from the public domain will be furnished to the Secretary of the Interior. Authorizes the Secretary of Agriculture to require users of roads under the control of the Forest Service to maintain such roads in a satisfactory condition commensurate with the particular use requirements. Authorizes the Secretary to require users of such roads to reconstruct the same where reconstruction is needed to accommodate such use. If the required maintenance or reconstruction cannot be provided by the user, or if the Secretary determines that maintenance or reconstruction by the user is not practical, the Secretary is authorized to require the deposit of sufficient funds to enable the Secretary to perform the work. Deposits made to cover maintenance or reconstruction of roads will go into a fund and will be available until expended to cover the cost of accomplishing the work. Pooling of deposits for work on adjacent and overlapping areas and the use of estimates to determine the cost of performing the work with such deposits is authorized.

Unexpended balances upon accomplishment of the work will be transferred to miscellaneous receipts or refunded as appropriate. Provides that where the agreement under which the United States obtained its rights to a road provides for delayed payments, any fees or collections for the use of the road can be placed in a fund to pay the Government's grantor.

FOREST DEVELOPMENT ROADS AND TRAILS

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HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON PUBLIC WORKS
UNITED STATES SENATE
EIGHTY-EIGHTH CONGRESS
FIRST SESSION

ON

S. 1147

A BILL TO ENABLE THE SECRETARY OF AGRICULTURE TO
CONSTRUCT AND MAINTAIN AN ADEQUATE SYSTEM OF
ROADS AND TRAILS FOR THE NATIONAL FORESTS, AND
FOR OTHER PURPOSES

JUNE 11 AND JULY 31, 1963

Printed for the use of the Committee on Public Works



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WASHINGTON : 1963

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FOREST DEVELOPMENT ROADS AND TRAILS

TUESDAY, JUNE 11, 1963

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC ROADS
OF THE COMMITTEE ON PUBLIC WORKS,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 4200, New Senate Office Building, Senator Jennings Randolph presiding.
Present: Senators Randolph, Gruening, Metcalf, Jordan, Brewster, Cooper, and Miller.

Also present: Mr. Clausen, of California; Ron M. Linton, chief clerk; Richard E. Gerish, assistant chief clerk; Theo W. Sneed, Richard B. Royce, professional staff members.

Senator RANDOLPH. Good morning.

Our Subcommittee on Public Roads is convened this morning to hear testimony on S. 1147, a measure introduced by request of the Secretary of Agriculture.

(S. 1147 and letter from the Secretary follows:)

[S. 1147, 88th Cong., 1st sess.]

A BILL To enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services.

SEC. 2. The Secretary is authorized, under such regulations as he may prescribe subject to the provisions of this Act, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way (1) over national forest lands and other lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

SEC. 3. An easement granted under this Act may be terminated by consent of the owner of the easement by condemnation, or after a five-year period of nonuse the Secretary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within sixty days after receipt of the notice, a hearing in accordance with such rules and regulations as may be issued by the Secretary.

SEC. 4. The Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service in locations and according to

specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof, and for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of national forest timber and other products, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products from lands tributary thereto are to be constructed, the purchasers of national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard and the Secretary is authorized to make such arrangements to this end as may be appropriate.

SEC. 5. Copies of all instruments affecting permanent interests in land executed pursuant to this Act shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from the public domain shall be furnished to the Secretary of the Interior.

SEC. 6. The Secretary may require the user or users of a road under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a road to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost hereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

SEC. 7. Whenever the agreement under which the United States has obtained for the use of, or in connection with, the national forests and other lands administered by the Forest Service a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., January 10, 1963.

HON. LYNDON B. JOHNSON,
President of the Senate.

DEAR MR. PRESIDENT: Transmitted herewith for the consideration of the Congress is a draft bill to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

This Department recommends enactment of the draft bill.

The draft bill is designed to provide to the Secretary of Agriculture certain authorities that are urgently needed and which will be of material aid in constructing and maintaining an adequate system of roads and trails for the national forests and other lands administered by the Forest Service. It specifically would—

1. Set forth findings and declarations of the Congress that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential to provide for intensive use, protection, and management of such lands under principles of multiple use and sustained yield of products and services.

2. Authorize the Secretary of Agriculture to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way over national forest lands and other lands administered by the Forest Service and over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

3. Provide for termination of easements so granted with provision that if cancellation is to be for nonuse the owner must be notified and, if he so requests, be given a hearing in accordance with rules and regulations of the Secretary.

4. Authorize the Secretary to provide for the acquisition, construction, and maintenance of forest development roads, within and near the national forests and other lands administered by the Forest Service, of maximum economy in harvesting timber and at the same time meet the needs for other protection, management, and utilization purposes (a) with appropriated funds, (b) by requirements on purchasers of national forest timber and other products with provisions for amortization of road costs, (c) by cooperation with public and private agencies or persons, or (d) by a combination of these methods. Where roads of a higher standard than that needed in harvesting timber and other products are to be constructed, purchasers of national forest timber and other products would not be required to bear any part of the cost necessary to meet such higher standard and the Secretary would be authorized to make appropriate arrangements to this end.

5. Direct that all instruments affecting permanent interests in land executed pursuant to the bill would be recorded in the county records and copies of all affecting lands reserved from the public domain would be furnished to the Secretary of the Interior.

6. Authorize the Secretary to require users of the roads under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements. The maintenance to be borne by each user would be proportioned to total use. The Secretary would also be authorized to require users of such roads to reconstruct the same where such reconstruction is needed to accommodate the use. If the required maintenance or reconstruction could not be provided by the user or if the Secretary determined that maintenance or reconstruction by the user would not be practical, the Secretary would be authorized to require the deposit of sufficient funds for such purpose. Deposits made to cover maintenance or reconstruction of roads would go into a fund and would be available until expended to cover the cost of accomplishing the work. Pooling of deposits for work on adjacent and overlapping areas and the use of estimates to determine the cost of performing the work with such deposits would be authorized. Unexpended balances upon accomplishment of the work would be transferred to miscellaneous receipts or refunded as appropriate.

7. Provide that where the agreement under which the United States obtained its rights as to a road provides for delayed payments, any fees or collections for the use of such a road could be placed in a fund to pay the Government's grantor.

There are administered by the Forest Service 154 national forests, 18 national grasslands, and other administrative units, comprising about 186 million acres of land in 44 States and the Commonwealth of Puerto Rico.

An adequate system of forest development roads and trails connecting with forest highways and other highways is essential to proper management and beneficial use of the lands comprising the national forest system and their resources. The presence or absence of transportation facilities has a direct and controlling influence on all phases of forest land management and utilization. This fact determines the volume of timber that can be marketed, the size, duration, and distribution of timber sales within working circles, and the level of salvage cuttings. It is also a major factor in the level of use made of the recreation, wildlife, and forage resources of these lands. We strongly feel it is essential that an adequate system of forest roads and trails be developed and maintained to serve these lands if they are to provide their proper share to the well-being of the Nation.

As of June 30, 1961, there were in the forest development road and trail system about 179,200 miles of roads, and 106,600 miles of trails. It is estimated that the system of forest development roads and trails which will ultimately be needed

in order for the national forests to provide on a sustained-yield basis the fullest practicable amount of products and services from their timber, watershed, range, recreation, and wildlife resources will be comprised of about 542,000 miles of forest development roads and about 30,000 miles of trails.

The development program for the national forests which President Kennedy submitted to the Congress on September 21, 1961, proposed for the 10-year period 1963-72 the construction and reconstruction of about 79,400 miles of multi-purpose roads and 8,000 miles of trails in addition to supplemental work on roads to be constructed by purchasers of national forest timber and other products.

In order to provide and maintain such an adequate system of forest development roads and trails, it is necessary to have not only the funds to finance them, but also authority to facilitate and make possible effective arrangement for the installation and maintenance of the roads and trails.

In a great many instances, national forest lands are intermingled with lands in one or more non-Federal ownerships. The road or trail system needed in the particular area is one which will serve both the national forest land and the land in non-Federal ownership. Authority which would enable the Secretary of Agriculture to make satisfactory arrangements for the construction and maintenance of roads in these circumstances is one of the keys to the installation and maintenance of a system of roads and trails to adequately serve the national forests.

A similar letter is being sent to the Speaker of the House.

The Bureau of the Budget advises that the enactment of this proposed legislation would be in accord with the President's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary*.

Senator RANDOLPH. This proposal would establish the easement granting authority of the Secretary in national forest lands and enable the Department of Agriculture through its Forest Service program to construct and maintain an adequate system of national forest roads and trails.

It is worth noting at the outset of the hearing that the general issue presented here today is not new in the Congress. It has been brought before us at an earlier date. There has been, however, a note of urgency added during the past year, brought on by the Attorney General's ruling of February 1962, which altered the understanding which had existed for approximately 65 years regarding access to the national forests by owners where lands are intermingled with Government property.

It is the hope that by our testimony here and by our discussion of the presentations by witnesses, that we might have a better understanding and clarification of the issues involved. If the subcommittee believes it advisable to report legislation, in so doing we would hope to correct the ambiguities that may have developed the last year.

It is also hoped that the hearing will help to clarify the relationship between the regulations which were officially promulgated by the Department of Agriculture on yesterday and, the pending measure.

I think it is fair to state that there appears to be some difference of opinion between members within the lumber industry and members of the Government regarding the bearing which these regulations have on the general subject matter covered in S. 1147.

I am glad this morning as we begin the hearing to have Senators Gruening, Metcalf, and Miller present. We hope that other members of the subcommittee who have indicated that they will attend will find it possible to be here.

The first witness is the Deputy Chief of the Forest Service, M. M. Nelson.

Would you bring those persons with you, Mr. Nelson, that you think might be helpful, and introduce them so that the record may so reflect.

Mr. NELSON. I have with me Mr. Reynolds Florance who will make a statement in connection with the bill.

Senator RANDOLPH. Thank you, Mr. Florance.

**STATEMENT OF M. M. NELSON, DEPUTY CHIEF, FOREST SERVICE,
U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY REYNOLDS
FLORANCE, DIRECTOR, DIVISION OF LEGISLATIVE REPORTING
AND LIAISON, FOREST SERVICE, U.S. DEPARTMENT OF
AGRICULTURE**

Mr. NELSON. Mr. Chairman and members of the committee, I am glad to be here today and appear before you in support of S. 1147, a bill to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

Mine will be a brief statement and then I would like to have Reynolds Florance, Director of our Division of Legislative Reporting and Liaison, make a fuller statement on the purposes of the bill.

The national forests are directed by the act of June 12, 1960, to be developed and administered for multiple-use and sustained yield of their several products and services. This includes their outdoor recreation, range, timber, watershed, and wildlife and fish resources. The degree to which this mandate from the Congress is carried out depends in large measure upon the adequacy of the system of forest development roads and trails.

S. 1147 would give to the Secretary of Agriculture additional authority that would enable him more efficiently and more effectively to provide for the construction and maintenance of forest development roads. It also would give to the Secretary of Agriculture authority to grant road easements over national forest lands.

This bill would give the Secretary of Agriculture authority which is needed, without regard to regulations based on existing law.

I would now like to have Mr. Florance make his statement.

Senator RANDOLPH. Mr. Nelson, before Mr. Florance proceeds, I would want the record to indicate that we are privileged today to have with us Representative Don H. Clausen of the First District of California. We know of his interest in the pending measure and we are happy to have him cross from the House to the Senate to be with us today.

Mr. CLAUSEN. Thank you, Senator

Senator RANDOLPH. Mr. Nelson, Senator Gruening will have some questions.

Senator GRUENING. Mr. Nelson, this may not be particularly pertinent to this legislation, but it is related.

How is the determination made what funds are to be allocated to what forests? What is the process by which that is determined?

Mr. NELSON. I presume you are referring to the road funds.

Senator GRUENING. Yes, sir.

Mr. NELSON. We have the national forest program, which is an overall inventory indication of what we want to do in the national forests over the next 10-year period. That program was sent to the Congress by the President 2 years ago, I believe it was. That program indicates by States the inventory of the type of work that needs to be done and various classes of work, including road work.

Our present practice is to allocate road funds based upon that national forest program to the various regional foresters, and they in turn to the States.

Senator GRUENING. Well, now, is that a different allocation from that that is described under the head of "Protection and utilization"?

Mr. NELSON. Yes; it is a different fund.

Senator GRUENING. You allocate certain funds every year for forest protection and utilization, do you not?

Mr. NELSON. Yes; the road funds are a separate line item there in the budget called "Road and trail funds."

Senator GRUENING. Well, would you be able to tell me how the determination is made as to the allocation of funds for forest protection and utilization?

Mr. NELSON. It is on the same basis as the national forest program.

Senator GRUENING. The reason I raise this point is because I have before me a table of the funds that would be programed this year for allocation, and there is a very strange disparity and discrimination among the States. I notice the presence here of the distinguished Senator from Iowa, and I want to congratulate him. He ranks third highest in the allocation of funds percentagewise in the Union. He gets \$29.11 per acres in the State of Iowa, which comes only after Massachusetts, which gets the colossal sum of \$174.68, and New York, which gets \$60.

Now, Montana here, which is so ably represented by Senator Metcalf, gets only 57 cents an acre. Alaska, as usual, is at the bottom of the totem pole with only 16 cents per acre, and we wonder why there is a strange discrimination.

I want to ask unanimous consent that this table be inserted in the record.

Senator RANDOLPH. I think if you are going to mention States, you should not allow West Virginia to go unnoticed.

Senator GRUENING. Well, West Virginia fares relatively well. It gets \$2.23 per acre.

Senator MILLER. Mr. Chairman, may I ask my distinguished colleague from Alaska whether in connection with those figures, he also has the amount of land concerned?

Senator GRUENING. Yes, indeed.

Senator MILLER. And how does this compare—

Senator GRUENING. Iowa has a total of 5,296 acres, a very small amount, and allocated to it is \$154,200, which makes an amount per acre of \$29.11.

Senator MILLER. May I ask, How does that 5,000 acres in Iowa compare with the acreage in States such as Montana and Alaska?

Senator GRUENING. Well, Alaska has the largest acreage of any State in the Union, 20,742,224 acres, just slightly topping Idaho, which is second, which is 20,349,401 acres, and Montana has 16,635,730 and gets \$9,421,200, which is only 57 cents an acre, and it does seem to me that there is such a wide disparity there that there is something I think the Forest Service might well look into, and I know the Members of the Congress representing these various States will be interested.

Now, the distinguished Congressman from California is here. He gets \$1.37 per acre. He gets about one-tenth the amount that Iowa gets.

Senator MILLER. Well, may I say this to my friend from Alaska. It may be that the height of corn in Iowa makes it a little more expensive to get into the forests in Iowa than it does in Alaska.

Senator GRUENING. Now, as I see, the distinguished Senator from North Carolina, Mr. Jordan, has just come in. I want to point out that they do pretty well, too. They get \$2.83 an acre which, of course, is not comparable with what Iowa gets, but is far superior to what Montana and Alaska get.

North Carolina has a total acreage of 1,124,152 acres of national forest and it received for them \$3,182,100.

I was just pointing out the strange disparity that seems to exist in the allocation of funds for forest promotion in various States of the Union, and I was led to make the statement because I discovered that Alaska was at the very bottom with only 16 cents per acre.

I would appreciate it if—

Senator RANDOLPH. We will make this—

Senator GRUENING. Mr. Chairman, if you would have the Forest Service make a report on why these tremendous discriminations. After all, I mean, I can see why there would be some differences, but when you have a contrast between 16 cents per acre in Alaska and \$174 per acre in Massachusetts, it is rather striking.

Senator RANDOLPH. We will have the table made a part of the hearing.

(The table referred to follows:)

Total allocation for forest protection and utilization (estimated, fiscal year 1963)

State	Total acreage	Dollars	Amount per acre
Alabama.....	631,772	1,955,300	\$3.09
Alaska.....	20,742,224	3,320,900	.16
Arizona.....	11,381,561	6,521,900	.57
Arkansas.....	2,405,030	3,083,600	1.28
California.....	19,963,359	27,439,700	1.37
Colorado.....	14,350,487	7,433,900	.52
Connecticut.....		136,600	
Delaware.....		45,000	
District of Columbia.....		5,827,000	
Florida.....	1,074,758	2,299,600	2.14
Georgia.....	786,438	2,737,300	3.48
Hawaii.....		73,000	
Idaho.....	20,349,401	14,308,400	.70
Illinois.....	211,013	946,800	4.49
Indiana.....	121,930	468,200	3.84
Iowa.....	5,296	154,200	29.11
Kansas.....	107,114	103,600	.97
Kentucky.....	459,084	1,534,500	3.34
Louisiana.....	591,566	2,407,200	4.07
Maine.....	50,021	816,500	16.32
Maryland.....		757,800	
Massachusetts.....	1,651	288,400	174.68
Michigan.....	2,559,412	4,011,800	1.57
Minnesota.....	2,787,407	3,611,700	1.30
Mississippi.....	1,133,973	3,468,200	3.06
Missouri.....	1,374,573	2,111,200	1.54
Montana.....	16,635,730	9,421,200	.57
Nebraska.....	339,716	362,800	1.07
Nevada.....	5,058,028	1,083,000	.21
New Hampshire.....	677,559	1,332,900	1.97
New Jersey.....		255,500	
New Mexico.....	8,997,993	4,992,200	.55
New York.....	13,747	828,900	60.30
North Carolina.....	1,124,152	3,182,100	2.83
North Dakota.....	1,104,850	454,300	.41
Ohio.....	106,655	1,186,400	11.12
Oklahoma.....	267,883	564,600	2.11
Oregon.....	14,938,806	15,047,700	1.01
Pennsylvania.....	470,869	1,475,900	3.08
Rhode Island.....		75,300	
South Carolina.....	587,273	1,626,500	2.77
South Dakota.....	2,004,004	2,772,000	1.38
Tennessee.....	595,982	1,471,600	2.47
Texas.....	775,263	1,875,500	2.42
Utah.....	7,922,001	6,780,400	.86
Vermont.....	231,901	654,300	2.82
Virginia.....	1,448,815	2,573,000	1.78
Washington.....	9,668,619	9,118,000	.94
West Virginia.....	903,982	2,018,200	2.23
Wisconsin.....	1,468,743	5,810,700	3.96
Wyoming.....	9,144,255	3,913,100	.43

Senator RANDOLPH. Mr. Nelson, do you wish while you are here at the stand to respond to the inquiry?

Senator GRUENING. The Senator from North Carolina makes a suggestion that we should elect a president from Alaska instead of Massachusetts.

Mr. NELSON. I don't believe we need to respond at the present time. We will furnish anything for the record that the Senator would like.

Senator RANDOLPH. I would think that in the hearing we would want to be able to place your reply to the comment of Senator Gruening. So if you will address a letter to us, we will include it at the appropriate point in the hearing, in connection with the discussion and the publication of the table.

Mr. NELSON. I could say right now that there are a great many other things than acreage that go into determination of road needs, such as the number of people that use the forests, the demand for products from the forests at the present time, all those types of things.

Senator GRUENING. But on the other hand, you are utilizing a national resource. The acreage—the number of trees and the necessity of preserving them and utilizing them should not vary so greatly with the population. You are dealing with a national resource. It would seem to me that this disparity can't be quite explained on the question of population.

Mr. NELSON. That is just one of the factors.

Senator GRUENING. There are people living in the forest areas anyway. Certainly there are not so many people in Massachusetts that would justify that tremendous difference. I think we would all be interested in knowing why Massachusetts gets \$174 an acre and Alaska gets 16 cents.

(The following information was supplied:)

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, D.C., June 19, 1963.

HON. JENNINGS RANDOLPH,
Chairman, Subcommittee on Public Roads, Committee on Public Works, U.S. Senate.

DEAR SENATOR RANDOLPH: At the hearing on June 11 on S. 1147 we were requested to furnish the committee certain additional information. This information is as follows:

1. The basis on which forest protection and utilization and forest roads and trails funds are allocated:

The report "A Development Program for the National Forests," transmitted to the Congress by the President on September 21, 1961, outlines specific proposals for developing all renewable resources on the national forests during the next 10 years and beyond to the year 2000. This program was prepared on the basis of information developed from on-the-ground inventories and high-priority work needs to be accomplished for all national forests and national grassland areas. The needs for all such lands received full consideration. The resulting distribution by States will bring about a well-balanced multiple-use management program for all the national forests and national grasslands. Research and other programs are similarly scheduled on the basis of long-range plans and projections. The general methods used in allocating funds available to the Forest Service for forest protection and utilization are described below. The annual relationships among the States may vary due to relative priorities but the total long-range needs and objectives are carefully appraised so that the long-range goals will be properly considered and financed.

FOREST PROTECTION AND UTILIZATION

National forest protection and management

These funds are distributed by Washington office to regions and, in turn, by the regions to the national forests based upon—

(1) Workload analyses of national forests; i.e., computed man-years of recurrent protection and management work at all levels involved in national forest administration. In this procedure the management job is broken down into tasks and a unit time allowance is measured for each task. The number of times the task is performed at each location, multiplied by the time allowance, gives the total workload. The money is allocated equitably between forest units on the basis of this workload measurement.

(2) Project work inventories; for example, acres of national forest lands in need of reforestation or revegetation; numbers and kinds of physical structures needing maintenance; number of fire lookouts to be constructed or replaced, etc.

Allotments of these funds are usually made without any earmarking by States in regions which include more than one State. State distributions are determined by the location of the fieldwork as programmed on the national forests.

Fighting forest fires

These funds are distributed only on the basis of actual need and use, dependent on fire occurrence.

Insect and disease control

Distributed to regions and national forests on the basis of annual surveys of tree insect and disease infestations.

Forest research

Funds distributed to directors of research stations, generally identified for specific field locations where the kind of research being programed can best be accomplished.

State and private forestry cooperation

The major part of this subappropriation is paid to the States on a cooperative matching basis, and distribution among the States is made on a formula basis by agreement with the Association of State Foresters. All other funds, used for Forest Service administration and technical services related to State and private forestry, are distributed to regions on the basis of analyses of recurrent workloads.

Forest roads and trails

The funds in this appropriation are distributed to regions, and by regions to national forests, based on project work inventories; i.e., miles of roads and trails to be maintained; miles of roads and trails needed to be constructed, related to timber access and all other uses of national forests.

2. Illustration of intended use of authority section 2 would provide for the Secretary of Agriculture to grant permanent or temporary easements for road rights-of-way "over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it":

Where there is need to construct a road for the development, protection, and utilization of a portion of a national forest, the road might cross intermingled or adjacent lands belonging to several private owners. One owner may be a timber operator and the others may be nonoperators. If the Forest Service and the operator are to cooperate or, in other words, to share costs in the construction of the road, the Forest Service will need to assure the operator of the right to use that portion of the road to be constructed on those portions of the road which cross each landowner. In this way there could be full cooperation, with the operator having the right to make use of the road for its full length.

3. Examples of situations in which permanent easements would be granted over national forest lands under the authority section 2 would provide to the Secretary of Agriculture:

(a) The Forest Service generally will acquire permanent easements for road rights-of-way across intermingled or adjacent privately owned land. In those situations where a landowner from whom the Forest Service is seeking such an easement across national forest land for a road in connection with the development and management of his own land, that easement would be granted permanently in the same way as the easement the Forest Service seeks to obtain.

(b) In situations where a landowner seeks an easement across national forest land for a roadway to be constructed and maintained in connection with the development and management of its lands on a permanent basis, it would be granted a permanent easement.

Sincerely yours,

M. M. NELSON, *Deputy Chief.*

Senator RANDOLPH. We are pleased now to have the statement of Mr. Florance.

Mr. FLORANCE. Mr. Chairman and members of the committee, I am pleased to be here today to testify before your committee in support of S. 1147, a bill to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

This bill was transmitted to the President of the Senate by Secretary Freeman on January 10, 1963, with a recommendation for enactment. It is designed to provide to the Secretary of Agriculture cer-

tain authorities which will be of material assistance in constructing and maintaining an adequate system of roads and trails for the national forests and other lands administered by the Forest Service. }

This national forest system is comprised of about 186 million acres of land in 44 States and the Commonwealth of Puerto Rico. It includes 154 national forests, 18 national grasslands, and other administrative units administered by the Forest Service. There are about 181.5 million acres of national forest lands and thus the national forests are the preponderant part of the national forest system. Within the national forests there are about 160 million acres which are withdrawn from the public domain and about 21 million acres of acquired lands. Generally speaking, the acquired national forest lands are in the eastern part of the country and those withdrawn from the public domain are in the national forests lying west of the Great Plains.

An adequate system of forest development roads and trails connecting with forest highways and other highways is essential to proper management and beneficial use of the lands comprising the national forest system and their resources. The presence or absence of transportation facilities has a direct and controlling influence on all phases of forest land management and utilization.

The Secretary of Agriculture has basic authority to provide and maintain forest development roads and trails. S. 1147 would give to the Secretary of Agriculture certain additional authority that would facilitate and make possible more efficient and more effective arrangements in the installation and maintenance of roads and trails. It is in the nature of a housekeeping measure.

I would like to discuss the bill section by section as to what it would do and why we recommend its enactment.

Section 1 is a desirable finding and declaration by the Congress as to the need for, and benefits to be derived from, an adequate system of roads and trails to serve the national forests and other lands administered by the Forest Service on an intensive basis under principles of multiple use and sustained yield.

Section 2 would give the Secretary of Agriculture authority to grant easements for road rights-of-way over national forests and other lands administered by the Forest Service. There are nearly 40 million acres of land in non-Federal ownership within the exterior boundaries of the national forests. Much of this is managed for timber production. The timber harvested from it must in many instances be hauled out over national forest land.

There is now no authority under which the Secretary of Agriculture can grant easements for road rights-of-way over national forests. Such easements may be granted by the Secretary of the Interior over national forest land withdrawn from the public domain but not as to acquired national forest land. Permits of a revocable nature can be issued by the Secretary of Agriculture but these are not always acceptable, particularly to those with whom the Forest Service is negotiating to obtain on behalf of the United States permanent rights-of-way for roads in the Forest Service transportation system.

With respect to national forest land withdrawn from the public domain, the present arrangement for easements to be granted by the Secretary of the Interior entails the work of two departments. Sec-

tion 2 would make it necessary for persons seeking such easements to deal only with the land-administering agency. Section 2 also would enable persons needing to haul products across acquired national forest land to obtain easements, whereas they can only obtain revocable permits at the present time. Thus the section will be of material benefit to those needing to haul their products over national forest land. It will also facilitate negotiations for rights-of-way needed by the Forest Service where the landowner needs a right-of-way across the national forest.

Section 2 would also authorize easements to be granted for road rights-of-way over other lands with respect to which the Department of Agriculture has rights under the terms of the grant to it. There are many segments of roads constructed by the Forest Service on rights-of-way obtained by it over lands in non-Federal ownership. In many instances the road would serve both the national forest and the non-Federal land within the national forest. In such instances the private landowner would want to obtain the right to use the portion of the road constructed by the Forest Service across the non-Federal land as well as the portion of the road constructed on national forest land. This section would enable such persons to obtain a grant from the Secretary of Agriculture for the right to use the road for its full length.

Section 3 would provide for the termination or cancellation of an easement granted by the Secretary under the act. A significant provision is that, before an easement would be canceled for nonuse, the owner would be notified and would be given an opportunity for a hearing. It is desirable that there be authority to cancel easements which have in fact been abandoned. At the same time it is recognized that, in many instances, roads used primarily in connection with the harvesting of timber are not used every year because the need for them may be in connection with periodic cuttings. Such roads should not be considered as having been abandoned in between cuttings. Adequate protection is given to the owner of such roads in these circumstances.

Section 4 would authorize the Secretary to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service in locations and to specifications which will permit maximum economy in harvesting timber from the tributary national forest and other Forest Service lands and at the same time meet the needs for protection, development, and management of such lands and for the utilization of other resources thereof. Financing of such roads could be either (a) with appropriated funds, (b) by requirements of purchases of national forest timber or other products, with provision for amortization of road costs, (c) by cooperation with public and private agencies or persons, or (d) by a combination of these methods.

The Multiple-Use Sustained-Yield Act of June 12, 1960, authorizes and directs the Secretary of Agriculture to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom. These same principles of management are applied to the national grasslands which are administered by the Forest Service as a

part of the national forest system. In accordance with these principles, the roads which serve the lands of the national forest system must serve not only the harvesting of timber from such lands, but also recreation and other uses and the needs for full protection and development and management of all the renewable resources of such lands.

By use of appropriated funds and through cooperative arrangements, roads of maximum economy may now be provided and maintained. Many of the roads of the forest development road system have been, and will be required to be built by purchasers of national forest timber and other products. Where roads are to be constructed by purchasers of national forest timber and other products, the Secretary may at the present time require the construction of only what are referred to as prudent operator roads—that is, the standard of road needed for the particular timber sale. This does not lead to maximum economy where a higher standard of road is needed to serve the remaining area from which timber and other national forest products will need to be hauled over the road.

Roads required to be constructed by purchasers of national forest timber and other products are actually paid for by the Government and not by the timber purchaser since their cost is taken into consideration and allowed for in the appraisal of the timber. Thus the timber pays for them.

In order to assure that timber and other products sold from the national forest lands will not in effect pay for a higher standard of road than that needed for the hauling of the timber and other products from the national forest land tributary to such road, a proviso is included in section 4 that a purchaser of national forest timber and other products will not be required to put up out of his own funds more than the cost of the standard of road needed in the harvesting and removal of the tributary timber. In order to make this work it will be necessary for that portion of the cost of the road attributable to the standard higher than that needed for the hauling of timber and other products (from the national forest) to be borne out of appropriated funds.

This will require a joint effort in the construction of the road, with the timber purchaser putting up part of the cost and the Forest Service putting up the balance. The Secretary would be authorized to make appropriate arrangements to accomplish this.

To further facilitate the requirements for construction of roads by purchasers of timber and other forest products, section 4 would authorize the inclusion in sale contracts of provisions for amortization of road costs. This is the method by which the timber pays for the road. This authorization would be implemented by a contract provision to make such adjustments in total stumpage payments as proved necessary to amortize the cost of roads built by the purchaser in accordance with contract requirements. Such provisions in sale contracts protect both the Government and the purchaser against loss in the event of overrun or underrun in timber or other product volume and against overestimate or underestimate of road construction costs.

Section 5 has to do with the recording of instruments and needs no comment.

Section 6 would authorize the Secretary to require users of roads under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in satisfactory condition commensurate with the particular use requirements of each. It is made clear that the maintenance to be required of each user shall be proportionate to the total use in order that no user would be required to bear more than his proper share of the maintenance.

The Secretary would also be authorized to require users of such roads to reconstruct the roads where such reconstruction is needed to accommodate such use. The section would also authorize the Secretary, if he determines that maintenance or reconstruction by the user would not be practical, to require the user to deposit sufficient funds to enable the Secretary to perform the work. Such deposits would be in an amount needed to cover the proportionate part of the maintenance or reconstruction which the user would otherwise have been required to perform.

At the present time the Secretary has authority to require the user of a road under the jurisdiction of the Forest Service, including purchasers of national forest timber and other products, to perform maintenance and reconstruction. Under existing authority, the Forest Service may perform the work for a purchaser through deposits made by the purchaser if he so desires. The Secretary cannot, however, require such purchasers to make such deposits. There are many situations where the road user is not equipped to perform the maintenance or reconstruction work which would be required of him. Also, there are many situations where two or more need to use the same road. In many of such cases it would not be practical to have each user perform a separate part of the maintenance or reconstruction. The authority to require deposits in such situations would enable the Secretary to assure satisfactory and effective performance of the maintenance or reconstruction work.

Under section 7, fees or deposits for the use of any road as to which the Forest Service has obtained its rights under an agreement providing for delayed payments to the Government's grantor would be authorized to be placed in a special account to make such delayed payment. This would include not only road-use fee payments made by haulers of timber and other products from non-Federal land but also any deposits which the Secretary might require to be made by purchasers of national forest timber or other products.

In conclusion, S. 1147 would enable the Secretary of Agriculture to accommodate the needs of persons desiring rights-of-way for roads across national forest lands. It would also enable the Secretary to more effectively carry out the responsibilities for the development and management of the national forest system under principles of multiple use and sustained yield. It contains adequate safeguards to assure that persons using the forest development roads system will not be unduly burdened.

Senator GRUENING (presiding). Thank you very much, Mr. Florence, for your very comprehensive and excellent statement. Are there any questions?

Senator JORDAN?

Senator JORDAN. I believe not, sir.

Senator GRUENING. Senator Cooper?

Senator COOPER. Am I correct in saying that the Secretary of Agriculture now has the authority to grant a revocable permit over lands under the control of the Department of Agriculture?

Mr. FLORANCE. The Secretary of Agriculture now has authority to grant revocable permits only over both acquired national forest lands and national forest lands reserved from the public domain.

Senator COOPER. What he asks, then, in this bill is for authority to grant an easement.

Mr. FLORANCE. That is correct.

Senator COOPER. But terminable upon notice by the Secretary.

Mr. FLORANCE. Under the terms of the bill the easements that the Secretary would be authorized to grant could be either for specified periods or permanent.

Senator COOPER. Or permanent?

Mr. FLORANCE. As the particular situation indicated. But permanent easements could be granted under the authority which this bill would provide.

Senator COOPER. Do you mean the Secretary has no authority now to grant an easement to a citizen or any groups of citizens?

Mr. FLORANCE. That is correct. There is no authority in the Secretary of Agriculture at this time to grant easements over national forest lands for roads.

Senator COOPER. Even of limited duration?

Mr. FLORANCE. That is right. Not for any specified period. The only authority now is to grant permission to construct and maintain roads on a purely revocable basis, and these are done by means of permits.

Senator COOPER. What would be the extent of the easement? Is it intended to permit the grantee to use a road that had been constructed by the Forest Service, or could it also enable the person, to whom the easement is granted, the right to construct a road?

Mr. FLORANCE. The easements that could be granted under the terms of this bill could be of both kinds. That is, the right to use an existing road or the right to construct new roads.

Senator COOPER. I see.

Senator GRUENING. Senator Metcalf?

Senator METCALF. If the Senator from Kentucky will yield, I wanted to point out, however, that, as you have testified, the Secretary of the Interior has the power to grant these permanent easements, and does.

Mr. FLORANCE. Across the national forest lands withdrawn from the public domain; that is correct.

Senator METCALF. So there is authority in one agency of the Government to grant a permanent easement.

Mr. FLORANCE. That is correct. The Secretary of the Interior now has authority to grant a permanent easement for roads across national forest lands withdrawn from the public domain. There is no—

Senator METCALF. The Secretary of Agriculture can grant such an easement across acquired land?

Mr. FLORANCE. No. There is no authority in either Secretary now to grant such an easement across acquired national forest lands.

Senator COOPER. As I understand the practice today, if a permit was granted to a purchaser of timber in a national forest the cost of the road to get the timber out is paid for out of appropriations.

Mr. FLORANCE. If a person purchases national forest timber, he may be required to construct roads that are needed for the operation of that particular timber sale. The cost of those roads is taken into consideration in the appraisal of the timber. The cost, however, has to be put up by the timber purchaser and he recaptures his costs out of the values in the timber.

Senator COOPER. Is it correct that the bill would change present practice—the grantee of the easement would be required to pay the cost necessary to construct the road to a standard which would ordinarily be required to remove timber, and any additional cost would be paid out of appropriations. Am I correct?

Mr. FLORANCE. That is correct. At the present time the Secretary can require a timber purchaser to build only what I referred to as prudent operator roads. In other words, roads to a standard which will enable him to remove the timber covered by that particular timber sale. However, a timber sale may be made in an area in which roads needs to be constructed, where additional timber that would be sold in the future would have to be hauled out over that same road, and this bill would authorize the Secretary to require the purchaser to construct a standard of road that would provide the maximum economy for the hauling of all tributary timber and at the same time meeting other needs for the protection and use of the other national forest resources.

Senator COOPER. I would like to have further explanation concerning section 2. As I understand it, section 2 refers to rights-of-way on lands other than those in the national forest domain; is that correct?

Mr. FLORANCE. That is correct. In other words, at the present time the Forest Service has acquired in the name of the United States the right to construct roads over adjacent lands to the national forests which are in non-Federal ownership.

Now, where the terms of the grant to the United States would permit the Secretary to do so, this would enable him to grant not only an easement for the use of a road across the national forest land but also across that portion of the road constructed on a right-of-way over non-Federal land. Thus the grantee of that easement would then have the authority to use the full length of that road.

Senator COOPER. That is a rather interesting procedure. I would like to press it a little bit. This reminds me of a bill presented a couple of years ago. The Department of Agriculture desires to secure rights-of-way over the lands of an individual to connect its separated properties. A benefit would accrue to the Department of Agriculture.

Now, does this section authorize the Department to grant easements upon the right-of-way which has been acquired by the Department from a private individual?

Mr. FLORANCE. Yes. That would be true in those cases where the grant to the Government permits us to do that. Now, the need for that, Senator—

Senator COOPER. You would have to secure such a right from the private owner; wouldn't you?

Mr. FLORANCE. That is correct. We would go out, and we do go out today and acquire easements across adjacent non-Federal land. Now, we may acquire an easement from John Doe and build a road

that is located partly on national forest lands and partly on that easement and partly on an easement that we obtained from another landowner. Company X may have timber back of that road and it may need to haul its timber out over both the national forest land and across that adjacent land on which we have constructed a road system.

This bill would enable us by this provision to grant not only an easement across the national forest land and the right to use that portion of the road but also the portion of the road located on the easement that we have obtained from the private landowners.

Senator COOPER. But then the easements you obtain from the private landowners, you would have to secure in such easements the authority to grant easements to other persons.

Mr. FLORANCE. That is correct.

Senator COOPER. You would intend to secure such authority in an easement granted to the Department?

Mr. FLORANCE. Yes; we couldn't convey any more than we had obtained.

Senator COOPER. Will you tell me why you are asking for this authority? Is it because in some cases the private landowner objects to granting—

Mr. FLORANCE. No, sir.

Senator COOPER. Easements to other persons?

Mr. FLORANCE. This authority is not based on any objection or question that has been raised by the landowner from whom we would obtain the right-of-way. This provision has been included in order to meet the needs of this company X that may own timber up inside the national forest and it, too, may need to haul its timber out over this single road system that has been constructed by the Forest Service.

Senator COOPER. The point is, you want such person or company to come to you for the easements, rather than go to the individual owner.

Mr. FLORANCE. Not necessarily. We do feel that in most of these situations a single road system should serve both the national forest land and the intermingled non-Federal land. We feel that one system will meet the needs and one system is all that should be installed, assuming that appropriate arrangements can be made between the landowners and the persons who have need for that road.

Senator COOPER. I would appreciate very much if you would file additional statements giving illustrations of the intended use of the provision, and the need for it—

Mr. FLORANCE. Yes, sir.

Senator COOPER. And your reasons for asking for it.

Mr. FLORANCE. I think I have explained the reason for asking for it, but we will be glad to file with you an illustration of situations in which this—

Senator COOPER. It is a right which a private individual should grant. I would like to know why the Secretary of the Department wants to gather to itself all this power to grant easements to other people over private lands of John Jones. I would just like you to spell it out in detail.

Mr. FLORANCE. We would be glad to do that, Senator.

Senator RANDOLPH (now presiding). Mr. Florance, you and Mr. Nelson understand that there is a concern, an understandable concern

of the members of this committee in connection with the conditions under which easements would be granted and the terms of section 2. I know that there is a concern and it has been voiced to the chairman of the subcommittee about the fair market value—I believe that is the expression—as the basis for reciprocal easements.

Would you wish to comment on that aspect at this time?

MR. FLORANCE. I would like to make this comment, Senator Randolph:

The question of reciprocal easements is really not involved in this section 2. That is a point that was covered in the Attorney General's opinion of February 1, 1962, in which he said that both the Secretary of Agriculture and the Secretary of the Interior now have authority in issuing either an easement or a revocable permit for roads to require the applicant for that conveyed to the Government, rights to use either a right-of-way or an existing road across his land. This section simply would place in the Secretary of Agriculture authority to grant permanent easements for roads over all national forest lands, whereas at the present time the Secretary of the Interior only has authority to grant such permanent easements across public domain national forest, and no one has authority to grant those permanent easements for roads across acquired land.

The other part of this section that Senator Cooper has inquired about dealing with the granting of easements across rights-of-way over other lands is one that neither Secretary now has authority to grant, and this would enable the Secretary of Agriculture to give to someone who was seeking authority to cross the national forest land or use an existing national forest road to use not just the portion of it on national forest land, but to use the entire road. So this is really designed to accommodate the needs of people and companies who have need to use existing Forest Service roads.

Senator COOPER. I can understand the objective of this proposal is to enable the Department of Agriculture to manage and dispose of its timber in a more orderly way.

The bill would enable the securing of easements over private lands which separate tracts in the national forest.

MR. FLORANCE. We think that this would make our negotiations for easements simpler. It would give us authority which would enable us to provide to persons with whom we are negotiating, rights they now can't obtain.

Let me illustrate it in this way:

In many of the national forests, we have a checkerboard situation. The Forest Service may have gone out and acquired easements across the intermingled non-Federal land and built a road across the intermingled national forest and non-Federal land. Now, that particular road may be a part of a complete road system for the drainage or for that particular area. When we go out to obtain easements across other people's land, in the light of the need to extend that road system, we may want to enter into a cooperative agreement whereby that road system will be constructed cooperatively. So they say all right, we will give to you an easement across our land, but we also want you to give to us an easement across the national forest land and across the portion of this road that you already have constructed on non-Federal land.

Now, this would permit us to do that.

Senator COOPER. I understand. But this doesn't obtain, I would say, in the country with which I am familiar in my own State. Assume that a tract of land is owned by John Jones, or the old familiar John Doe, and that the owner had developed a road across his land. I suppose in your negotiations for an easement you would have to take into consideration the value of the road he had developed across his own land.

Mr. FLORANCE. Oh, yes.

Senator COOPER. Let me ask if section 2 carries with it any power of condemnation of rights-of-way across a private owner's land?

Mr. FLORANCE. This particular section, Senator Cooper, deals only with the granting of easements by the Secretary of Agriculture, either over lands that are under his administration or over land as to which he already has some rights. It does not deal with the acquisition by the Forest Service of additional rights-of-way or rights to use a road across another's land.

Senator COOPER. I want to find out all I can about this bill. Assume that there are three tracts of land. Tract A is owned by the National Forest Service in the public domain. The next tract is B, owned by John Doe. Tract C is in the national forest.

In 1962 the Department of Agriculture acquires a right-of-way across the private tract B to connect its two tracts. Later it decides it would like to sell timber on tract C to some person other than the owner of tract B.

Would section 2 give the Department the right to give an easement across the privately owned tract of land without again negotiating with the owner?

Mr. FLORANCE. It would in those cases where the terms of the grant to the Government would permit that. In other words, if the Government has that right, this would permit us to pass that right along to a third person. If the Government doesn't have that right, then, of course, it couldn't pass it on.

Senator COOPER. I think that is true, legally. In other words, you assume that in every case you would have to secure in any easement granted, authority to convey rights to other persons. Your agreement would have to embody such a right.

Mr. FLORANCE. That is correct.

Senator COOPER. Well, I suppose it is up to the person who grants an easement to comprehend all the things that he is granting and its values.

Senator RANDOLPH. Senator Miller, do you have a question?

Senator MILLER. I have a few questions, Mr. Chairman.

Mr. Florance, I was temporarily called out of the committee room and if I asked a question that you have already responded to, just tell us, please.

I would like first of all to ask you about section 2, where authority is granted to the Secretary to grant permanent easements. Why permanent? Why not just temporary easements?

Mr. FLORANCE. We feel that the authority to grant permanent easements in many instances will fill the needs of an applicant for an easement better than would an easement for a temporary period, say 10 or 20 years, and certainly better than a revocable permit which is all we can issue at the present time.

Senator MILLER. Well, I can see where if I were an acquiring person I would rather have a permanent easement, but I can also see from the standpoint of Government that a permanent easement might tie us down a little too much. I am wondering why a temporary easement for a period of years with an option to renew, to negotiate a renewal, would not satisfy the purpose.

Mr. FLORANCE. Well, this bill would enable us to do that but in those situations where a permanent easement would serve the needs better, it would also permit a permanent easement to be granted.

In other words, under the bill you could grant it for specified periods or permanently.

Senator MILLER. I understand. I am just wondering why we have to go as far as making it a permanent proposition. As I say, I can understand the acquiring party might prefer to have a permanent easement, but I can also understand why from the Government's standpoint we might not want to give permanent easements, and we might prefer to put it on a temporary basis. I can't see how it is going to jeopardize the Government's interest any to make it on a temporary basis, and I can't understand yet why it would jeopardize the acquiring party's interest too much if they were confined to a period of years, rather than something that is permanent. Permanent is an awfully long time, and I am sure you know that there have been a lot of disputes, a lot of problems raised over permanent easements. That is the reason I am asking this question.

Mr. FLORANCE. Well, many of those who have sought easements from the Government or have indicated that they would like to have them have indicated they would want those easements to be on a permanent basis.

Now, there is provision in here for the termination or cancellation of these easements, particularly in the event of abandonment.

Senator MILLER. Yes, I understand that. I am wondering why a 50-year easement, or, for example, a 99-year easement wouldn't get the job done just as well as a permanent easement.

Mr. FLORANCE. It might in some cases and, of course, in those cases that type of easement would be granted.

Senator MILLER. Well, may I ask if you would supply for the record two or three examples which you consider to be the kind of examples which would compel the granting of a permanent easement in order to satisfy the requirements or the purposes of the development of the forest lands.

Mr. FLORANCE. We will be happy to do that, sir.

Senator MILLER. Thank you.

Now, the second question I have relates to section 3, in which authority is given to terminate an easement which has previously been granted under this authority by condemnation. Do I understand that the condemnation would entail a consideration?

Mr. FLORANCE. That is correct.

Senator MILLER. Do I understand that the permanent easements or temporary easements are for considerations also? In section 2?

Mr. FLORANCE. Yes, generally.

Senator MILLER. What would be the justification or the reasons for the condemnation authority which is given in section 3? I don't find any conditions to the condemnation set forth in the bill, so I

would like to find out from you what would be the conditions under which condemnation would be exercised?

Mr. FLORANCE. One condition would be that if an easement had been granted that was for either a specified period or permanent and it was necessary for the Government to use that property for some other purpose with which the existence of that road would be in conflict, such as a reservoir, it might be necessary for the Government to terminate that easement.

In the case of a substantial investment in roadway in that easement, it would be only fair that the grantee of that easement be compensated for the property right that he has in that easement, and that is what the condemnation provision would do. Of course, the condemnation would come into play only in the event there was failure to reach agreement through negotiations.

Senator MILLER. Now, you mentioned a condemnation in a reservoir situation as one example. What about condemnation in connection with the development of a recreational area?

Mr. FLORANCE. Any need that the Government might have for the use of that land with which the existence of a road would be in conflict, the Government might have to terminate that easement, and if it did so, under this arrangement it would be required through condemnation to compensate the owner of that easement.

Senator MILLER. In other words, your position would be that any need found by the Secretary would be sufficient justification to go through with condemnation proceedings?

Mr. FLORANCE. That is true today with any property that the Secretary has authority to acquire and has need for. He can exercise that need by requesting the Attorney General to condemn.

Senator MILLER. And all he has to do——

Mr. FLORANCE. And this would not enlarge upon that authority.

Senator MILLER. And all he has to do is simply make a finding or a statement that this is needed.

Mr. FLORANCE. He has to make a determination that it is needed, and he so certifies to the Attorney General when he makes the request for condemnation.

Senator MILLER. Does he have to expand upon the nature of the need?

Mr. FLORANCE. Well, generally speaking, he simply has to make a determination that there is a need for it.

Senator COOPER. Will the Senator yield?

Senator MILLER. Yes.

Senator COOPER. I think it is correct, that in contrast to the rule in many States, that under the Federal rule if there is a finding by the person having the authority to institute condemnation proceedings, if there is a finding of necessity, the finding is conclusive. It can't be questioned by proof.

Mr. FLORANCE. That is my understanding.

Senator MILLER. In other words, there is no difference here from other Federal procedures.

Mr. FLORANCE. That is correct. This doesn't change the procedure in that respect at all.

Senator MILLER. All right.

My third question, and I hope you will forgive me for asking it, but it is something that could cause problems. Right at the top of the page you say that the Secretary can acquire, construct, and maintain roads within and near the national forests. What do you mean by "near"?

Mr. FLORANCE. In many instances the main artery or highway lies outside the boundaries of the national forests. In order to get the timber and other forest products out, it is necessary for us to construct roads not only within the national forest boundaries, but out to the main road system, and that is what the term "near" means.

Senator MILLER. Well, I take it, of course, "near" could be 50 feet. It could be—what is the range here? How far out could "near" be?

Mr. FLORANCE. Well, in this instance it would be as near or as far as is needed to get out to the main highway. In other words, the roads serving these national forests must connect with the main highways. Our present authority permits that, and our present road system in many instances actually connects up with either a forest highway or a Federal-aid highway that is some distance outside the national forest.

Senator MILLER. Well, I would hope that "near" means as near as can be economically feasible to be developed and would not be arbitrarily determined on a different basis. In other words, I can understand how 50 feet might not be economically feasible because you might have a deep ravine. I can understand how you might have to go a half mile to have an economically feasible situation. Would that be the essence of the determination? What is economically feasible to develop?

Mr. FLORANCE. I am sure that the interpretation of this would be reasonable and it would be construed as meaning that we would make our road system connect up in the most feasible and economical way with the through highways.

This may go several miles and not just a matter of a few hundred feet, because if you have a national forest and the nearest through highway is 10 miles outside of the national forest boundary, and you have got to remove this timber from inside the national forest and haul it down to a mill down along the road some 50 or 60 miles away, you have got to get to that main highway. If it takes you 10 miles to do it, then you have to do it.

Senator MILLER. But the location would basically be determined by economic feasibility.

Mr. FLORANCE. That is correct.

Senator MILLER. Is that the test?

Mr. FLORANCE. That is one of the tests.

Senator METCALF. Would the Senator yield? And it would be determined by the nearest public highway. I think it should be qualified by that, that "near" means the nearest public highway.

Mr. NELSON. Basically that is what we do, is to get out to the nearest public transportation. That might be a county road or a State highway.

Senator METCALF. Secondary road or other forest road.

Senator MILLER. I am sure the Senator recognizes that the nearest approach might be horribly costly to get to that.

Senator METCALF. That is correct. So you have to go to some further road which was a cheaper construction.

Senator MILLER. That is correct. Thank you.

Now, in section 5, Mr. Florance, you provide that copies of all instruments affecting permanent interests in land be recorded. Why do we limit this to permanent interests or permanent easements? Why not record all easements in the county in which the lands are located?

Mr. FLORANCE. Well, I would certainly see no objection to doing that, provide for recording any instrument that gave a vested right in that land, rather than a revocable permit. Those instruments that are of a permanent nature. If it were for a period of 50 years or a specified period, there would certainly be no objection to recording those also.

Senator MILLER. Don't you think it would be desirable?

Mr. FLORANCE. Yes.

Mr. MILLER. Thank you.

Now, one final—two more questions. On page 4 of the bill you provided that the maintenance to be borne by each user shall be proportionate to total use. What do you mean by total use?

For example, here is what I am thinking about. I can see how it might be computed on the basis of the number of vehicles or vehicle miles. I can see how there might be a weighted basis, depending upon the kind of vehicles. Ordinary passenger cars versus large trucks.

What would be the basis for computing proportionate total use?

Mr. NELSON. It would be based on total use. For instance, the number of passenger cars or, in the case of timberland, a thousand board feet of timber per mile hauled.

Now, if we were hauling—if we got involved with minerals or something of that type, it would probably be a weight basis. Somewhat comparable to the weight of a thousand board feet.

Mr. MILLER. In other words, we are talking now about the kind of use which has a direct bearing on the wear and tear on the road, as distinguished from a mere number of vehicles?

Mr. NELSON. Yes; that is correct.

Senator MILLER. Thank you.

Now, the last question I have relates to the same section, line 15. You provided that the Secretary may require that sufficient funds be deposited. I am wondering if a bond requirement might not be sufficient, rather than the actual deposit of the funds.

Mr. FLORANCE. This particular provision would come into play only in those situations where instead of the user performing the maintenance, the Government would perform the maintenance with funds deposited by the user. Therefore, whatever is deposited has to be available for expenditure.

Senator MILLER. I am sure of that, but I can understand how under this provision a deposit of many thousands of dollars might be required months, maybe even years, before they are actually expended.

It seems to me what we are interested in here is an assurance to the Government that the user will be paying his proportionate share of these maintenance costs, and if this is so, it would seem to me that under certain circumstances, at least, a bond to assure this would be sufficient, rather than the actual deposit of the money.

Mr. NELSON. Senator Miller, many of our roads will have several haulers hauling on them at the same time. The maintenance, of course, has to be done currently in order to keep the roads in condition for

proper hauling. Consequently, these deposits that might be put up are spent currently to keep the roads currently in condition for the hauling. The maintenance has to be done while the hauling is going on, so we have to have the money either being spent by the operator himself in the maintenance, or by the Forest Service as an example.

This comes in use particularly where there are several operators and it isn't practical for the Forest Service to have a grader running on the road and operator A have a grader running on the road and operator B doing some other part of the maintenance work. It is kind of a situation where it is desirable to pool all that into one fund and take care of it at that time.

So that is one of the main uses of this deposit.

Senator MILLER. Well, in the example you gave, I can certainly understand how practical that is. But I was just wondering if there might not be situations where you would only have one or two users, in which the maintenance might occur infrequently, but nevertheless you want to be sure you have the money available, and if in those situations, if we might not provide an alternative here, depending on the requirements of the situation for sufficient funds to be deposited or a bond to assure payment to the Government at the proper time. I am trying merely to suggest a little more flexibility for you people which would tie in with your requirements without forcing in very single situation a deposit of funds.

Mr. FLORANCE. In those situations where the moneys deposited would need to be used from time to time, deposits could be made periodically. For instance, if a user were going to use a road for 3 years, there would be no need for him to deposit in the first year the funds that were going to be used for the maintenance in the second and third years. Deposits would be required from time to time in those situations in sufficient amounts and sufficiently in advance to enable the Forest Service to perform the maintenance work.

Now, actually, as far as a bond is concerned, there probably are very few situations where a bond would be necessary because assurance that the funds would be deposited or that the user would meet his requirements can be obtained from the fact that if he doesn't make the deposits as he is required to do, he simply doesn't get to use it. That is a sufficient bond in most situations.

It is possible, I think, that some arrangements might be worked out in some limited situations for use of bonds. But in any event, the user would not be required to deposit more funds than were needed in the anticipated period for which the deposit is made.

Senator MILLER. Well, I appreciate your response to that and I hope you realize that my question is prompted by a desire to give you a little more flexibility. I can understand how we might have a situation which could cause a little friction if a user was asked to deposit funds which he might in a given situation not expect to be used for months.

He might say, well, why don't you let me put up a bond? I need the use of this money in the meantime, and I will be glad to post a bond—if wouldn't this give you a little more flexibility which might be required in a few situations.

Do you think this is feasible?

Mr. FLORANCE. We might work out arrangements under this provision to do that.

Senator MILLER. Well, it would be difficult for me to see how you could work out arrangements under the provisions of the bill, because it says that he may require that sufficient funds be deposited, and if we were going to cover the problem I pose to you, I think we might have to modify it and say something like, may require that sufficient funds or a bond be deposited, or a bond be posted as required by the Secretary.

Senator RANDOLPH. A performance bond.

Senator MILLER. Right; a performance bond.

Mr. FLORANCE. Well, the difficulty is—and I don't mean to argue the point—but the difficulty is that a performance bond normally comes into play where a person is going to perform the work himself.

Senator MILLER. Well, let me say, I don't care what we call it, whether it is a performance bond or a surety bond, just so that the Secretary knows that if at the time he sends the bill in and says here is your portion of the costs, and the user does not come right back with his check, he can go to a bonding company and get the money. That is what I am talking about. And this could, in a given situation, avoid the necessity of a user actually depositing several thousands of dollars which he might otherwise need in the operations of his business.

Mr. FLORANCE. The moneys would have to be deposited in sufficient time to enable the work to be performed with it.

Senator MILLER. Is this going to be in advance of the performance of the work or at the completion?

Mr. FLORANCE. Usually it is in advance, because to do the work you have to have the money available. In other words, we can't go out and contract, for instance, with a private road maintenance contractor to perform work unless we have funds available to pay him.

Senator MILLER. Well, as I understand——

Mr. FLORANCE. So those moneys have to be on hand.

Senator MILLER. I am not an expert on contracting, but as I understand it, the Government doesn't pay all of this work at once. It waits until a certain amount of completion is accomplished before it pays for it to the contractor.

Mr. FLORANCE. That is true. Where maintenance is going to be performed—maintenance is a recurring thing and it has to be performed at different times. Now, you wouldn't need to require a road user to deposit the total maintenance cost for his entire period of use at one time. You could have periodic deposits, and I am sure that that is what would be done under this.

Senator MILLER. Well, now, I appreciate your bringing that out and I am sure that that is your intention, but let me invite your attention to the fact that the language of the bill says that the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction.

Now, my interpretation of that would be that the total maintenance costs would be determined and that the user's portion thereof would be determined, and then he would be required to deposit that portion.

Now, from what you have just said, that is not necessarily the way it would work out. His portion would be determined but he in turn would only be required to deposit a piece of that portion from time to time. Is that——

Mr. FLORANCE. That is correct.

Senator MILLER. Is that the meaning and intention of this language?

Mr. FLORANCE. That is correct.

Senator MILLER. All right; that answers my question.

Thank you very much.

Senator RANDOLPH. Thank you, Senator.

Senator Metcalf?

Senator METCALF. Mr. Chairman, I think some of the complications of this proposed legislation have already been indicated by the chairman. A couple of times he has mentioned the Attorney General's opinion that would change some of the access situations. I wonder if, in order to have the information readily available for the study of this, that could be supplied and incorporated in the record?

Senator RANDOLPH. Yes. I think the suggestion is helpful and we will have that done.

Senator METCALF. The second thing was that the chairman himself suggested that the Secretary of Agriculture has recently signed access regulations which would have some effect upon this legislation and affect the whole picture. I haven't seen those regulations. I had hoped that they would be brought here to the committee today and perhaps we could have some clarification. I understand that those regulations are ready for promulgation, though; is that correct, Mr. Florence? Or Mr. Nelson?

Mr. NELSON. Yes. The regulations were signed by the Secretary yesterday, and I am not just sure whether they were published in the Federal Register.

Do you know?

Mr. FLORANCE. They were filed.

Mr. NELSON. Filed, to be published in the Federal Register.

Senator METCALF. I have been informed by representatives of the Department of Agriculture that detailed instructions will be subsequently issued to qualify and implement these regulations; is that correct?

Mr. NELSON. Yes. In fact, the Secretary at the time he signed the regulations yesterday wrote Mr. Cliff, the Chief of the Forest Service, a letter dated yesterday in which he outlines some of the items in the way that he wishes these regulations to be implemented. Then there will follow the Forest Service manual instructions which are our instructions to our field people in interpretation and use of the regulations. That is done in order to have all of our field people interpreting and looking at them as nearly as possible in the same ways.

Senator METCALF. Now, I would hope that you would have continued conferences, not only with the lumber interests that are directly affected by the regulations, but with the conservation groups that are also very much concerned. I have been a little bit disappointed with the failure of the Secretary of Agriculture to properly consult with conservation groups in the course of the development of these regulations, and I would hope that during the course of having instructions, that you would have an open conference with all interested parties invited.

(The letter from Secretary of Agriculture, Orville L. Freeman, and the national forest access regulations are as follows:)

DEPARTMENT OF AGRICULTURE,
Washington, D.C., June 10, 1963.

Mr. EDWARD P. CLIFF,
Chief, Forest Service, Department of Agriculture.

DEAR MR. CLIFF: I have approved the proposed national forest access regulations which have been carefully considered in conjunction with the record of the hearings held on April 23 and 29, the analysis of the testimony, and a special report made to me by Dr. Selke after reviewing some selected road systems in the West.

In framing the regulations much weight has been given to the Attorney General's opinion of February 1, 1962, the several Comptroller General's decisions which bear on cost recovery and cooperation, and to the Multiple Use Act of June 12, 1960. This, of course, is proper.

It is evident in virtually every case that multiple-use access to national forest lands is needed for the proper protection, administration, and utilization of the national forests or, where necessary, for the use and development of the resources upon which communities within or adjacent to the national forest are dependent. Only where there is immediate need for temporary access for limited purposes there can be economically met by such procedure, or where the foreseeable need of the United States does not justify the expenditure necessary to provide a permanent road or trail, will use of temporary agreements or rental arrangements be considered.

Much road construction in the national forests has been and will continue to be by national forest timber purchasers and, therefore, is presently limited to the prudent operator concept. Such roads will later require improvements to meet multiple-use needs for management of all the land resources and to better serve all the people who use the national forests now and in the years to come. Therefore, nonrestrictive permanent easements are initially necessary to meet the foreseeable use. This includes use of recreationists, hunters, and fishermen as well as haulers of timber and other products and meeting the attendant needs of other permittees such as stockmen, water users, and miners. Since the long-time purpose of national forest roads is to accommodate mixed traffic or all anticipated kinds of traffic at various times, it is essential that the Government be in a position to regulate the traffic it plans to accommodate.

Whenever possible and feasible, the Forest Service should avoid duplicating existing roads and road systems as a land and timber-growing conservation policy by making a single road system serve all tributary ownerships.

Under these principles the guiding objective will be to work cooperatively with forest users, neighboring landowners, and other agencies of Government, including States, counties, and local subdivisions for the mutual benefit of them and the Federal Government.

Some forest landowners have expressed concern over the possibility they may be unwilling to agree with decisions made by the Forest Service involving the value of private road rights and the rules of use under which the road will be operated. Within the framework of these regulations, local issues should be settled on local grounds so far as practicable. Where agreement cannot be arrived at in the field with reasonable dispatch, the Chief's office should review the issues and propose a solution. Until an appropriate body of experience has been accumulated in conducting these negotiations, I stand ready to arrange for review at the departmental level of those individual case decisions which cannot be resolved between the Forest Service and the other party. This will be an informal, administrative review requested by a party willing to enter a cooperative agreement but unwilling to agree to the value proposed by the Forest Service to be used in the agreement or the rules proposed for use of a road. It would not replace existing formal appeal procedures.

A person who feels aggrieved by an administrative action or decision of an officer of the Forest Service relating to the administration of these regulations is entitled to understanding, consideration, and prompt action on an appeal.

When negotiations to acquire access fail, the issues should be judicially settled by prompt use of condemnation.

The Forest Service has several obligations in administering these regulations. One is to protect the resources and productivity of the national forests. Another is to develop and extend the use of national forest land resources to the fullest

extent consistent with sustained productivity. A third is to recognize the rights and privileges of the owners of the intermingled and related lands in private and other ownerships. Consistent with laws and regulations, the Forest Service will be expected to assist and cooperate with the private owners in development and use of access for their lands and property.

Reasonable application and interpretation of these access regulations are important steps in meeting these obligations. Unless a particular owner wants to negotiate on a different basis, road systems for which reciprocal benefits will be sought should be limited to roads within or adjacent to one national forest. Where charges for recovery of road costs are to be made, rates of collections should be reasonable for the circumstances and fair in comparison with amounts generally being charged by other road owners under similar circumstances for road use in the area. It is important to recognize the vital interest which other users of a road have in the way the road is maintained and in the way traffic is kept moving. Obligations assumed by the Forest Service under these regulations for road maintenance or for traffic control and movement must conscientiously be met.

As part of normal handling of public and private business, I expect the Forest Service to reach prompt decisions as to action to be taken on applications to use roads or occupy national forest lands under these regulations.

Problems involving use of these roads by the public must be met in a realistic manner. Roads having a legal status permitting it, are to be available for use by the public unless you or an official to whom you delegate this responsibility determine that use by the public must be restricted for public safety, or to comply with the terms of the easement under which the United States may use the road.

Administering these regulations will require special attention to careful selection and development of skilled personnel to effectively meet the varied technical requirements involved in working out agreements and in managing roads with equally effective attention to human relations.

It is recognized that more detailed instructions under these regulations will be necessary to provide guidance to field officers and to users of the national forests. These will have to be updated and improved as experience and further knowledge is gained in developing and managing the forest development road system. However, the regulations as now approved should go a long way in providing the framework for effective, efficient, and safe management and use of the national forest development road system. I want you to seek the suggestions of affected users when major changes in policy or procedures are indicated.

The rapidly increasing use of the national forests has placed increased demands on the road systems by recreationists, hunters, fishermen, commercial haulers, and other users. These regulations will be of significant benefit in helping in an orderly way to meet these increasing needs. They are approved with full confidence that their use will assure for future Americans continuing optimum benefits from the resources of the national forests.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

[From the Federal Register, June 13, 1963]

TITLE 36—PARKS, FORESTS, AND MEMORIALS

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

PART 212—ADMINISTRATION OF THE FOREST DEVELOPMENT TRANSPORTATION SYSTEM

Miscellaneous Amendments

Section 212.7 is revoked and Part 212 is amended by adding the following sections:

§ 212.7 Road system management.

(a) *Traffic rules*—(1) *General.* Traffic on roads under the jurisdiction of the Forest Service other than "Special Service Roads" shall be subject to State traffic laws where applicable: *Provided*, That use of such roads shall be subject to rules prescribed by the Chief, notice of which has been given by publication in a newspaper having general circulation in the locality and posting at the

entrances to the roads, covering uses of or operations on the road as to which the State laws and rules are not applicable or are not deemed adequate for the safety and protection of users of the roads and the National Forests.

(2) *Special service roads.* The Chief shall issue traffic rules governing the use of "Special Service Roads" or adopt in lieu thereof traffic rules promulgated for comparable roads of the State in which the road or segment of road is located, provided that where local traffic rules are adopted they shall be supplemented by him to the extent necessary to adequately govern special traffic uses and conditions, including but not limited to load weights and widths, size of vehicles, speed limits and provisions for the safety and protection of users and of the National Forests. Notice of such rules shall be given in the manner prescribed in subparagraph (1) of this paragraph.

(b) *Special service roads.* The Chief may designate a forest development road or a segment thereof a "Special Service Road" and control or regulate the use of the road as necessary in the public interest and safety: *Provided*, That the road is not a part of the highway system of a State, county, or other public road authority: *Provided further*, That the United States controls the right-of-way.

(c) *Cost recovery on special service roads.* Where the Chief determines that a share of the cost of acquisition, construction, reconstruction, improvement, or maintenance of a "Special Service Road," or a segment thereof, used or to be used for commercial hauling of non-Federal forest products and other non-Federal products, commodities and materials should be borne by the owners or haulers thereof and where such owners or haulers have not shared in the cost of acquisition, construction, reconstruction or improvement and have not made contributions to pay their proportionate cost shares, the Chief may condition the permission to use the particular "Special Service Road" or segment thereof upon payment to the United States of the proportionate share of such cost and bearing proportionate maintenance as has been determined by him to be attributable to such owner's or hauler's use in accordance with § 212.11.

§ 212.8 Ingress and egress.

(a) *Actual settlers and other persons residing within the boundaries of National Forests.* Actual settlers and other persons residing within the boundaries of National Forests shall be permitted ingress and egress over the National Forests and use of existing roads and trails in order to reach their homes and to utilize their property: *Provided*, Such ingress and egress or use shall conform to rules and regulations governing the protection and administration of the National Forest and the roads or trails to be used.

(b) *Others.* Entering upon the National Forest and use of existing roads and trails shall be permitted for all proper and lawful purposes, subject to compliance with rules and regulations governing the National Forests and the roads or trails to be used.

§ 212.9 Access procurement by the United States.

(a) *Policy.* The Chief shall obtain as promptly as is feasible needed road and trail access to National Forest land to assure effective protection, management and utilization of such land and its resources and for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent. Such access shall include procurement of interests in existing non-Federal roads and road systems, as well as rights-of-way for roads and trails over non-Federal land. Consideration shall be given in each case to the needs of the owners to use the existing roads in the protection, management and utilization of their lands and industries.

(b) *Existing or proposed Forest development roads which are or will be parts of a system of a State, county, or other local subdivision.* Forest development roads which are or will be parts of a system of a State, county, or other local subdivision road system and are on rights-of-way held in the name of the State, county, or other local subdivision may be constructed, reconstructed, improved or maintained by the Forest Service when there is an appropriate agreement with the State, county, or other local subdivision under authority of 23 U.S.C. 205: *Provided*, Such construction, reconstruction, improvement or maintenance is essential to provide safe and economic access to National Forest land.

(c) *Acquisition of easements and rights of use.* Except as otherwise provided in the regulations of this part, easements for road and trail construction across non-Federal lands and easements or rights of use over non-Federal roads and trails will be acquired in the name of the United States of America and its assigns. The easements or rights of use may be acquired by purchase, condemnation, donation, or as a reciprocal for permits or easements for rights-of-way for

roads or trails to be constructed or for easements over or permits to use existing roads or trails.

(d) *Methods of compensation for easements and rights of use acquired by the United States.* Compensation in negotiated acquisitions may be: (1) By payment from appropriated funds; (2) pursuant to reservation in the grant of easement to the United States whereby the grantor reserves the right to require haulers of Federal timber or other Federal products over the road conveyed or thereafter constructed by the grantor to make payments to the grantor in accordance with the terms of the reservation; (3) by granting reciprocal rights; or (4) by a combination of these methods. Compensation will be limited to the fair market value of the easement or right of use.

(e) *Cooperative construction and use agreements.* Where areas, partly National Forest and partly private or other ownership, are undeveloped or inadequately developed by roads, the Chief will, to the extent feasible and advantageous to the United States, join in planning, constructing, reconstructing, improving, maintaining, and using an adequate road system on the basis of each party bearing the proportion of the cost attributable to the anticipated benefits as set forth under § 212.11.

(f) *Condemnation.* Where access across non-Federal land or over a non-Federal road or trail cannot be obtained through negotiations with reasonable promptness, condemnation will be undertaken when: (1) Such action is necessary or advantageous to the United States; and (2) funds are available for payment of the anticipated award.

(g) *Access over non-Federal land and use of non-Federal roads or trails on a temporary basis.* The Chief may negotiate a temporary agreement for access over non-Federal land and for use of an existing non-Federal road or trail where there is immediate need for temporary access for limited purposes that can be economically met by such procedure, or where the foreseeable need does not justify the expenditures necessary to provide a permanent road or trail.

(h) *Use and control of interests in roads, trails and easements acquired by the United States.* Interests in roads, trails and easements acquired by the United States shall be under the control of the United States, subject to approved reservations, limitations and other provisions set forth in the deed, permit or other indenture. This control by the United States may include restricting or conditioning the use of the interest owned by the United States in the road, trail or easement where necessary.

§ 212.10 Permission to cross National Forest land and assignable rights-of-way owned by the United States.

(a) *Permission to construct and use roads across National Forest land and assignable rights-of-way owned by the United States.* If a reciprocal benefit is needed by the United States, permission to construct and use a road across National Forest land and across assignable rights-of-way owned by the United States and administered by the Forest Service will be conditioned, except as provided in this paragraph, for any applicant who seeks a permit to construct and use a road across the same, upon the grant to the United States of a reciprocal benefit. Such benefit shall bear: (1) A reasonable relation to the management of the National Forests; and (2) a value substantially similar to the value of the permission to cross National Forest land or right-of-way applied for. In those instances where the values of the interests needed by the United States exceed those applied for by the applicant, the additional interests required by the United States will be acquired as provided in § 212.9 (c) and (d). Where values needed by the applicant exceed those needed by the United States, the difference in values will be determined under principles set forth below and in §§ 212.7(c) and 212.11. If a reciprocal benefit is not needed by the United States, or the applicant shows good cause why the reciprocal benefit needed by the United States cannot or should not be granted by him, or the applicant declines to grant the reciprocal benefit requested by the United States or if a bona fide emergency exists, permission to construct and use a road across lands owned by the United States may be conditioned for any applicant upon reasonable charges and all other terms and conditions required by the Chief to protect the interest of the United States. Permits for road construction and use will be nonexclusive and will be conditioned upon compliance with their terms and conditions and with the rules and regulations governing the protection and administration of the National Forests and those applicable to such roads.

(b) *Permits for commercial hauling on special service roads.* Except for minor or occasional use, permits will be required for commercial hauling on "Special Service Roads" of non-Federal forest products, and other non-Federal

products, commodities, and materials when the Chief determines that such owners or haulers should provide: (1) Proportionate maintenance; (2) an equitable and reasonable needed reciprocal benefit to the United States; (3) a share of the cost of construction, reconstruction or improvement of such road or segment thereof; or (4) any combination of these. When such owners or haulers have not provided to the United States the needed reciprocal benefit, or borne their share of the cost, permission to use a road will be conditioned for any applicant upon the terms and requirements and subject to the like conditions and charges as prescribed in §§ 212.7(c) and 212.11(d) and in paragraph (a) of this section, for permission to construct or use such roads.

(c) *Easements and stipulations for roads crossing National Forest land having the status of land reserved from the public domain.* Applications for easements over National Forest land having the status of land reserved from the public domain, and over roads thereon, with appropriate stipulations will be approved by the Chief for those applicants who have conveyed or provided permanent multiple-use easements over roads and lands owned or controlled, directly or indirectly, by them to the United States of America and its assigns and who have already constructed, or will, as scheduled by the agreements, construct their proportionate share of the road or road system concerned. Such applications for easements shall be approved by the Chief only when they are for nonexclusive easements which retain in the United States all rights in the road or road system except the rights of the applicant to use and maintain the road or road system in the administration, protection, and utilization of lands and the resources thereof owned or controlled by the applicant, and when the rights applied for are limited to the share of use commensurate with the applicant's contribution to, or performance of, a share of construction or other improvement as set forth in the cooperative agreement or cooperative understanding covering the road or road system. Applications for easements in appropriate form, together with required plats showing the National Forest land having the status of land reserved from the public domain to be crossed, shall be forwarded to the Forest Service. When the Chief has determined that the applicant has satisfactorily constructed his determined share of the related road or road system, or is committed by appropriate agreement to deposit funds or construct his share of the road or road system, and has granted or provided the easements or other interest required by the United States under such agreement, the Chief after approval of the application, will attach thereto the stipulations agreed to by the applicant and the Chief covering the use of the easement applied for, and forward the same to the designated officer of the Department of the Interior for the purpose of obtaining the required easement under the authority of the Secretary of the Interior. When the easement is approved and returned by the officer of the Department of the Interior to the Forest Service for entry in its records, it will be entered and thereafter delivered to the applicant pursuant to agreement.

§ 212.11 Principles for sharing use of roads.

The use of roads under arrangements for sharing costs or performance shall be in accordance with the following:

(a) *Road improvement.* Use of a road for commercial hauling, except occasional or minor amounts, will be conditioned upon improvement or supplemental construction of the road to safely and economically serve the contemplated use, unless the Chief determines that the safety and economy of the established and foreseeable use by the United States, its users and cooperators will not be impaired by the use for which application is being made. With the consent of the Chief the applicant may deposit funds in the estimated amount required for the improvements or supplemental construction in lieu of performance. Such funds will be used by the Forest Service to do the planned work. The cost of the improvements or supplemental construction will be taken into account in determining any otherwise required contribution to cover the proportionate share of the cost of road acquisition, construction, reconstruction or improvement attributable to the use.

(b) *Corresponding benefits.* Corresponding benefits which may be accepted by the Chief for sharing road use will be those which bear a reasonable relation to the management of the National Forests. They may be in the form of: (1) Deposit of funds with the Forest Service for use in paying the cost of road construction, reconstruction or improvement to be borne by the user; (2) the grant of a reciprocal right of substantially similar value to the road use sought; (3) construction over applicant's property of a new road needed for access to and use

of National Forest Land and the conveyance to the United States of America and its assigns of the needed rights in such road; or (4) any combination of these.

(c) *Cost determinations for roads cooperatively constructed under agreements.* When roads are constructed under cooperative agreements to meet mutual needs of the United States and others for access, determinations of the shares of costs to be born by the United States and the cooperating parties will include consideration of: (1) The standard of road required for the planned hauling; (2) the share of planned use; (3) the location and volume of tributary timber owned by each party and expected to be hauled over the road or roads; (4) the tributary areas owned or controlled by each party; (5) expected use by the public; and (6) other appropriate considerations.

(d) *Cost recovery by the United States from others on special service roads.* When roads designated as "Special Service Roads" are used under permit for commercial hauling instead of under cooperative agreement any cost to be recovered by the United States will be calculated in proportion to the planned use of the road. The road cost used in such calculation will be the amount or estimated amount expended in the acquisition, construction, reconstruction and improvement of that capacity of the road required to serve the use needs of all parties that are or reasonably can be expected to use the road. Such road share cost payments will be through deposits in advance of use unless the user provides a payment bond satisfactory to the Chief guaranteeing that payments will be made promptly upon billing by the Forest Service.

(e) *Cost sharing with a cooperator.* The costs to achieve the agreed upon road or road system may be met by: (1) Use of appropriated funds; (2) construction, reconstruction or improvement of roads or segments of roads by timber purchasers or other users; (3) use of deposits made by cooperator with the Forest Service to cover cooperator's agreed share; (4) agreement with cooperator pursuant to which cooperator does more than his agreed share of constructing, reconstructing or improving a road and recovers costs incurred in excess of his agreed share by charging National Forest timber purchasers and other commercial haulers using the road an equitable amount within the limits and to the total amount specified in the agreement; or (5) a combination of the aforementioned methods.

(f) *Road maintenance and resurfacing.* Cooperators, and permittees using "Special Service Roads" will share the road maintenance and resurfacing costs under suitable agreements to perform, arrange for performance by others, or by making deposits with the Forest Service which will be used to pay the costs of work performed for efficient use and for the preservation and protection of such roads from all elements, and to prevent erosion to adjacent lands: *Provided*, That purchasers of National Forest timber shall perform an agreed upon amount of maintenance work representing their proportionate share of necessary maintenance, or at their election in lieu of actual performance thereof, make payments to a specified maintainer of the agreed amounts for maintenance.

(g) *Interests to be acquired by the United States in roads or easements therefor.* Where the United States is to bear or share the cost of constructing, improving, or acquiring a road system, a road, or a segment thereof, or acquires an easement therefore, the interest acquired will: (1) Be for perpetual use unless the road use falls within the limited classes where temporary roads or roads for limited periods are acceptable; (2) provide adequately for foreseeable National Forest management, protection, and utilization needs; and for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent; and (3) not be subject to conditions, reservations, or covenants unrelated to the road use, or which seek or might tend to direct or limit National Forest management policies and procedures.

Regulation U-14 (36 CFR 251.5) is superseded insofar as it conflicts with the above.

(26 Stat. 1103, 16 U.S.C. 471; 30 Stat. 35-36, 16 U.S.C. 478, 551; 30 Stat. 1233, 16 U.S.C. 525; 72 Stat. 885 as amended, 23 U.S.C. 101, 205; 38 Stat. 430, 16 U.S.C. 498; 25 Stat. 357, 40 U.S.C. 257; 46 Stat. 1421, 40 U.S.C. 258a et seq.; 64 Stat. 82, 16 U.S.C. 572; 74 Stat. 215, 16 U.S.C. 528-531; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and Comp. Gen. B-150239, April 24, 1963, 42 Comp. Gen. ----)

Signed at Washington, D.C. on June 10, 1963.

ORVILLE L. FREEMAN, *Secretary.*

[F.R. Doc. 63-6241; Filed, June 12, 1963; 8:51 a.m.]

Mr. NELSON. The Secretary in his letter of instructions to the Chief indicates to the Chief that we should do that type of thing as one of the various items that he listed. I should point out in connection with the regulations that at the two hearings that were held there were a number of conservation groups represented, especially at the hearings here in Washington, and they expressed their views. We had a number of communications from conservation organizations expressing their views in connection with the regulations also which were taken into account.

Senator RANDOLPH. Thank you.

Senator METCALF. Mr. Chairman, I want to ask a couple of questions now about the bill itself.

Senator RANDOLPH. Yes indeed, Senator Metcalf.

Senator METCALF. It may be that after we have read these regulations as published in the Federal Register that they too—the staff might want to make them a part of the record of this hearing. But I would say that we should wait until we—

Senator RANDOLPH. Yes. We will determine if that will be appropriate and helpful.

Senator METCALF. Now, on this special legislation that is before us, in section 4 you provide for roads of a higher standard than needed in the harvesting of timber and provide that the timber purchasers will not be required to pay for the extra standard proposed, as for recreational use or some other use; isn't that correct?

Mr. FLORANCE. That is correct.

Senator METCALF. This is a new provision.

Mr. FLORANCE. Yes. This is new. In other words, at the present time the Secretary may require a purchaser of national forest timber to build roads that are needed to operate that sale. He cannot require those roads to be built to a higher standard than is needed for that particular sale. But this would enable us to build what we refer to as maximum economy roads. That is, I might inject a term "prudent landowner roads" rather than "maximum economy roads" and in contrast to "prudent operator roads." That is what this would enable us to require purchasers to build. In other words, the road is going

to serve not only that particular timber sale. It will serve other timber sales. It will serve other users of the national forests, recreation, hunters, fishermen, and so forth.

Senator METCALF. But you are——

Mr. NELSON. The breaking point comes, however, that we would require the timber purchaser under the sale to build that standard of road that would be required for the maximum economy in removing the timber and in providing for protection and other uses. As to additional road requirements because of other uses such as recreation, and the Government would pay for that the same as it does at the present time.

Senator METCALF. Out of appropriated funds.

Mr. NELSON. Out of appropriated funds.

Senator METCALF. Now, to pursue a little further the proposition that the Senator from Kentucky was discussing. Suppose you acquired easements from landowners, for instance, to take something that is familiar in my own experience, suppose you have a checker-board situation where you have national forest land and let us say Northern Pacific Railroad land intermingled, and maybe Anaconda Co. land intermingled, and you acquire easements over those two private lands for the purpose of building a higher road than this economy road that you mentioned. Would that mean that recreationers or other people in a multiple-use program would be permitted to use these easements across the Northern Pacific land and the Anaconda Co. land?

Mr. FLORANCE. Yes, Senator Metcalf. The easements that we need to acquire in connection with the national forests are those easements that will fill our full needs for the development and administration of the national forests under the principles of multiple use and sustained yield, so that the easements that we get, unless there is some special situation that doesn't call for it, are easements that will fill our full needs.

Senator METCALF. And that would then—when the need is under the decision to develop recreational areas, then you would acquire easements from those private individuals across their land and the national forest land to tap that recreation.

Mr. FLORANCE. That is correct.

Senator METCALF. Thank you, Mr. Chairman.

Senator RANDOLPH. Thank you, Senator Metcalf.

Senator Brewster?

Senator BREWSTER. No questions, Mr. Chairman.

Senator RANDOLPH. We thank you for joining the subcommittee today, Senator.

I have this suggestion to members of our subcommittee—Mr. Nelson and Mr. Florance, of course, are in Washington, D.C. They will be available to return if the subcommittee feels that a further hearing should be held. We will now hear from Mr. Orell and those who accompany him, with the prospect of recalling you, Mr. Nelson, and Mr. Florance, in the future if that is agreeable.

Thank you very much.

Mr. NELSON. Thank you.

Mr. FLORANCE. Thank you.

Senator RANDOLPH. Mr. Orell, would you identify yourself, and perhaps you would want to have all the gentlemen join you at the table. We might have them introduced formally at this time.

Off the record.

(Discussion off the record.)

Senator RANDOLPH. Back on the record.

If you will proceed.

STATEMENT OF BERNARD ORELL, CHAIRMAN, FOREST MANAGEMENT COMMITTEE, NATIONAL LUMBER MANUFACTURERS ASSOCIATION; ACCOMPANIED BY WALLER REED, FORESTER, COLLINS PINE CO., WESTERN PINE ASSOCIATION; GEORGE CRAIG, SECRETARY-MANAGER, WESTERN LUMBER MANUFACTURERS ASSOCIATION; JOHN CROWELL, ATTORNEY, GEORGIA-PACIFIC CORP.; GEORGE NEFF, FOREST MANAGER, THE ANACONDA CO.; AND JOHN CALLAGHAN, SECRETARY-MANAGER, CALIFORNIA FOREST PROTECTIVE ASSOCIATION

Mr. ORELL. I am Bernard Orell of Tacoma, Wash. I have with me Mr. Waller Reed, chief forester of the Collins Pine Co., representing the Western Pine Association; Mr. George Craig, secretary-manager of the Western Lumber Manufacturers Association; Mr. John Crowell, attorney with the Georgia-Pacific Corp.; Mr. George Neff, the Anaconda Co., land manager; and Mr. John Callaghan of California Forest Protective Association.

Senator RANDOLPH. Are you going to make reference, Mr. Orell, to certain maps?

Mr. ORELL. I will make reference to the maps.

Senator RANDOLPH. I think we might have the maps so that those in the audience can try to make this a cooperative hearing from the standpoint that they can see it as well as the members of the subcommittee. It might be placed here sort of at an angle at the end of the table if you can work from that point, Mr. Orell.

Mr. ORELL. I can. I also have a copy of the map, Mr. Chairman, for each of the members of the committee.

Senator RANDOLPH. Thank you.

Mr. ORELL. Mr. Chairman, I am chairman of the forest management committee of the National Lumber Manufacturers Association, and I have been intimately connected with forestry and forest products activities for the past 25 years. While I am presently a vice president of the Weyerhaeuser Co., my former experience includes having been supervisor of forestry for the State Division of Forestry of the State of Washington, and I have also worked for the State Department of Forestry in Oregon before and after the war and for the U.S. Forest Service. I also served as an assistant professor of forestry at the University of Washington School of Forestry.

While I am speaking for the National Lumber Manufacturers Association, which is a federation of some 16 regional species and forest product associations from all over the country, there are other associations which are not directly affiliated with NLMA who are with me today. These people represent, as does NLMA, timber growers,

timber purchasers, that is, purchasers of national forest timber and forest product manufacturers.

Presentations on the part of these people will be brief, but they will address themselves to sections of the bill in which they have a substantial interest.

I might also say that we have worked very closely with all of these people over a long period of time in negotiations with the Forest Service with regard to road rights-of-way, access and legislation, and we have really eliminated all conflict. There is agreement on the details of the bill and the recommendations we will make with regard to it.

If I may, with your permission, I would like to refer any questions which I cannot answer fully to one of the other gentleman at the table if it happens to develop that way.

You all realize, I am sure, the dependence of the forest industries on the forest resources of the country and the importance of access to forests in order to provide their manufacturing plants with a means by which they can get their raw material supply.

We recognize also our obligation to present to you Members of Congress the implications of legislation that affect the forest resources, and so we intend to address ourselves to the substantive aspects of the bill itself and also to some additions we would propose which have been agreed upon by industry as important to protect access to the national forests as well as to private forests.

Now, my purpose today will be not to discuss the technical details of my presentation with you, but review the highlights of the presentation as written, which you have before you and ask that the presentation be included in the record, if I may.

Senator RANDOLPH. Yes. We will have the statement included as if it were read.

(The statement referred to is as follows:)

STATEMENT BY BERNARD L. ORELL, CHAIRMAN, FOREST MANAGEMENT COMMITTEE,
NATIONAL LUMBER MANUFACTURERS ASSOCIATION

Mr. Chairman and gentlemen of the subcommittee, I am Bernard L. Orell, of Tacoma, Wash., and chairman of the Forest Management Committee of the National Lumber Manufacturers Association in whose behalf I appear here.

For more than 25 years I have been intimately associated with forestry. While I am a vice president of the Weyerhaeuser Co., I was formerly the supervisor of forestry for Washington State and before that with the Oregon State Forestry Department and the Forest Service. I also served as an assistant professor of forestry at the University of Washington.

This National Lumber Manufacturers Association is a federation of 16 regional species and product associations representing the lumber manufacturing industry in all parts of the United States.

While in making this statement I speak for the national association, I would like to mention that a number of additional industry associations not affiliated with NLMA have participated in the preparation of this statement. Representatives of several of these associations are here today and will make brief oral presentations which elaborate on specific sections of S. 1147 which are of particular importance to their memberships.

While each representative will speak only for his particular group, we have worked together sufficiently over the past several years on this legislation to eliminate any significant differences. Those appearing before you today represent substantial segments of either the timber growing or forest products manufacturing industry.

I would appreciate the privilege of referring questions you may have that I am unable to answer completely to the other members of our group. We feel this will give you an opportunity to secure a thorough and accurate picture of

this most complex subject. The industry has attempted to bring before you highly knowledgeable people on each of the issues involved.

As you know, the lumber and forest products industry, including its huge labor force in thousands of communities where our industrial plants and facilities are located, is completely dependent upon our Nation's forest resources for the raw material with which it serves the national need for lumber and wood products.

We realize our obligation to inform Congress on proposals affecting the Nation's forest resources and, therefore, have given careful attention to the pending legislation. In fact, some of the provisions of this bill were originally proposed by industry groups in the course of a number of conferences held with the Forest Service over the past 4 years.

PURPOSE OF S. 1147

S. 1147 is in the nature of an omnibus bill since its different sections cover several entirely different subjects. Section 2 refers to access to private lands across national forest lands; section 3 provides for the termination of easements across national forest lands; section 4 applies to road construction financing methods and requirements on national forest timber purchasers; section 5 covers the recording of instruments; section 6 authorizes the Forest Service to charge fees for the use of federally financed roads; and section 7 permits the Forest Service to apply receipts from the sale of Government timber to the purchaser of private roads. In total, the bill affects more than 200 million acres of land.

AREAS AND OWNERSHIP AFFECTED BY PROPOSED LEGISLATION

It may be helpful to spend a moment reviewing some statistics to establish the size of the land areas affected by this legislation. To begin with there are nearly 190 million acres of land within the national forests. This is a land area more than twice as large as the State of Montana and nine times as large as the State of Maine. Also, within the boundaries of the national forests there are an additional 38 million acres of non-Federal land.

Much national forest land is not accessible over established public highways and can therefore be reached only by crossing private or other non-Federal lands lying either within or adjacent to the national forests. Similarly about half of the 38 million acres of non-Federal land within the national forests can be reached only by crossing national forest land. Consequently, there are some 20 million acres of private forest land, much of it in tree farms, to which rights of access are affected by actions of the Federal Government. Thus, the area of non-Federal forest land which could be affected by S. 1147 is larger than the State of West Virginia.

While I will refer to areas in the Northwestern States with which I am personally most familiar, the land ownership pattern and access problems there are quite typical of all the 12 Western States. Senator Metcalf, of this subcommittee, will probably agree that the issues raised will apply equally well to his State. My remarks will also apply to a considerable degree to some areas in the East, the South, and Lake States where there are national forests.

LANDOWNERSHIP PATTERNS IN NATIONAL FORESTS

The landownership pattern to which I will refer, for purposes of illustration, is best typified by the areas that were involved in the original railroad land grants. Under these grants, dating back to the early 1800's, alternate sections of land on either side of the proposed routes were granted to the railroads to help finance construction. The alternate land sections remaining as part of the public domain subsequently became national forest lands when the forest preserves were created near the beginning of this century. Other land also went into State and private ownership through numerous land disposal laws over the past 150 years. In some areas national forest land is in solid blocks because no grants were made to railroads or others or because by exchange or purchase, the Forest Service acquired the intermingled State or private lands.

SNOQUALMIE TREE FARM

You have before you a map of an area within which is located one of our forest industry tree farms. This map shows a land ownership pattern typical of many national forest areas throughout the country. If you look closely at T. 23 N., R. 10 E., you will see an almost perfect checkerboard pattern. The lands shown in green are private tree farm lands. The yellow lands are those which remained in the public domain and which now form a part of the national forests. The pink area is State forest lands. Looking directly east to R. 11 E., you will see solid national forest ownership. Obviously, the timber grower and the Forest Service must cross each other's lands in order to manage and protect the lands owned by each in T. 23 N., R. 10 E.

NEED FOR PERMANENT ACCESS RIGHTS

Every timber grower, whether government or private, needs permanent access rights to his timber growing lands. Permanent access is essential for several reasons:

- (1) Access to property is an inherent part of the value of property ownership.
- (2) Timber is a long-term crop.
- (3) Costly access roads, governed by topography rather than by ownership boundaries, must be built in order to—
 - (a) Assure ready and adequate protection from forest fires;
 - (b) Allow fast salvage of windthrown and insect killed timber;
 - (c) Permit the orderly growing and harvesting of present and future timber crops; and
 - (d) Afford access for other land management purposes.

PAST ACCESS GRANT PRACTICES

The central and most important features of S. 1147, so far as most timber growers are concerned, is that it authorizes the Secretary of Agriculture to grant easements, either permanent or temporary, across lands under his jurisdiction. In view of the obvious importance of assuring access to all landowners, both public and private, you may be wondering why this matter of affording the Secretary of Agriculture easement-granting authority has become so essential in 1963. This requires a bit of explanation.

THE RULES CHANGED AFTER 1960

In the period from April 1960 through February 1962, several developments occurred that completely changed Forest Service road agreement practices. These developments which were in the nature of opinions and rulings by Government attorneys will be mentioned briefly because they overturned what had been relied on for many years as legal rights. None of these changes were based on any changes in law, but rather they were administrative changes in the interpretation of existing statutes.

Until February 1, 1962, the Ingress-Egress Act of June 4, 1897, was interpreted by Forest Service and private landowners alike as giving to owners of land within national forest boundaries a right to cross national forest lands in order to reach their own lands. This ingress was a statutory one, not granted by the Forest Service, but rather "evidenced" by what were characterized as "stipulations for ingress and egress" issued by the Forest Service. It was usually true, however, that such stipulations were issued only when a private landowner conveyed to the Forest Service a permanent easement across his own lands affording access to a national forest.

THE ATTORNEY GENERAL'S OPINION

In February 1962, however, the Attorney General of the United States issued an opinion reinterpreting the Ingress-Egress Act of June 4, 1897. The opinion declared that persons owning property within the boundaries of the national forests but who did not reside thereon were not "actual settlers" within the meaning of the Ingress-Egress Act and therefore did not have a statutory right of access across national forest lands to their own lands. The opinion held also that it would be proper for the Secretary of Agriculture to condition access to

private land upon receipt from the private land owner of a similar easement across his land which in turn would furnish access to national forest land.

The Attorney General's conclusion that access across national forest lands could be conditioned upon receipt of reciprocal easements across private lands is not particularly startling. After all, it is one of the principles upon which private forest land owners have exchanged access among themselves for many years. The startling aspect of the Attorney General's conclusion was the overturning of 65 years' established practice. The result thus placed in doubtful status all rights which were evidenced by stipulations; it also took away the right held by private land owners which was comparable to the Forest Service right of condemnation.

Great difficulty at once arose in application of the principles enunciated in the Attorney General's opinion. The opinion emphasized that grants which the Forest Service could require should be no more than reciprocal to those given. The Forest Service, like all landowners engaged in forestry and forest management, wants and insists on receiving permanent easements. But the Department of Agriculture has apparently always felt that it had no authority from Congress to grant easements over national forests for access to private lands. With the foundation for issuing the former stipulations torn down, the Department of Agriculture had no form of permanent easement-grant available which it could offer to the private landowner. And yet, the Forest Service refused to take less than a permanent easement from the private landowner in return for a permit revocable by the Forest Service. Unfortunately, this caused an impasse in many pending negotiations.

DEPARTMENT OF INTERIOR EASEMENT GRANTING AUTHORITY

The Attorney General's opinion anticipated this difficulty and suggested the provisions of the act of March 3, 1899, 16 U.S.C. section 525 be utilized for granting rights of way across certain of national forest lands. That statute says in its entirety:

"In the form provided by existing law the Secretary of the Interior may file and approve surveys and plots of any right-of-way for a wagon road, railroad, or other highway over and across any national forest when in his judgment the public interests will not be injuriously affected thereby."

Many private landowners, however, have taken the position that it would be imprudent to invest substantial sums in building roads on national forest lands in reliance on right-of-way permits issued under this statute. Their reasons are as follows:

(a) The statute does no more than to authorize the filing and approval of survey plots by the Secretary of the Interior.

(b) Since the statute says or implies nothing about the nature of the right, if any, which accrues from the Secretary's approval, any reliance on this statute could prove to be misplaced as a result of another interpretation by the Attorney General which may be unfavorable.

(c) The form of grants actually offered under this statute has included provisions subjecting the holder to any future changes in the administrative regulations of either the Department of Agriculture or the Department of the Interior. The nature of the right received under such grants could, consequently, be drastically changed or even abolished by a change in regulations.

(d) The grants do not even purport to run with the benefited land, and expressly provide that they may not be assigned without consent of the granting authorities. Thus, they are not in any sense "permanent."

(e) The procedure of going through both the Departments of Interior and Agriculture is inconvenient and cumbersome.

(f) There is doubt whether the statute applies only to those national forest lands withdrawn from the public domain, or whether it also applies also to lands purchased for inclusion in the national forests.

From the foregoing, it can be seen that one effect of the Attorney General's opinion has been to make imperative for the first time a vesting of authority in the Secretary of Agriculture to grant easements across the lands under his jurisdiction. Section 2 of S. 1147 does exactly this and the forest products industry fully supports it.

GAO RULING AUTHORIZING ROAD USE FEES

The Comptroller General in three separate rulings in 1960 and 1961 authorized the Forest Service to charge timber haulers fees for the use of roads constructed with Federal funds on national forest and private lands. This was done by redefining the word "tolls" in the Federal Highway Act which prohibits tolls of all kinds on roads built with such funds. The Comptroller General said that requiring private timber haulers to amortize a share of national forest road costs was not a "toll." The long-standing position of the Department of Agriculture against road toll charges was reversed. Until this time timber haulers were considered to be common public users of Federal roads as were recreationists, cattlemen, miners, or residents. All were considered to have similar rights of free use of roads built with public funds.

The GAO opinion was addressed solely to the question of whether timber haulers could be charged for the use of roads built either on national forests or on private lands with Federal moneys. The opinion said nothing about the feasibility of charging road users other than timber haulers for the use of such roads. In fact, had the opinion considered this additional question it might have reached a different conclusion in view of the explicit wording of the Federal Highway Act which flatly prohibited tolls.

The timber industry consequently was concerned about the possibility of being required to bear the full costs of such roads even though the roads were being used by other classes of users. This concern of the timber industry was confirmed when the Forest Service promulgated proposed regulations to implement both the Attorney General's opinion of February 1, 1962, and the Comptroller General's rulings.

Sections 4 and 6 of S. 1147 deal with this problem.

OPINION 88

In 1960 the General Counsel of the Agriculture Department promulgated his opinion 88 which held invalid an easement in which a private owner reserved free use of the road to be constructed on his land by the Forest Service. Regardless of the enforceability of that opinion against the Curry County, Oreg., landowner involved, its holding has become the policy of the Forest Service. Consequently, the Forest Service has refused to accept easements similarly conditioned. At the same time, however, the Forest Service has maintained its long-established policy of retaining free use for itself and its licensees of any road built on national forestland at private expense. This inconsistency has been another reason for recent frictions between the Forest Service and private landowners in their attempts to arrive at mutual and reciprocal right-of-way exchanges. We propose to alleviate the problems created by the opinion through an addition to section 2 of S. 1147, which will be explained in the later course of this statement.

PROPOSED FOREST SERVICE ROAD REGULATIONS

Toward the end of 1962, the Forest Service released proposed administrative regulations to govern its access needs as a result of the above-mentioned opinions.

The proposed regulations tended to increase the uncertainty and imbalance which had developed in the preceding 2 years. For example, the Attorney General ruled that a private landowner has no absolute right to cross the national forests to reach private land, and the Forest Service could condition any request for access across the national forest upon the grant of a right of substantially similar value across the applicant's private lands. The regulations proposed, however, that the Forest Service could require a right of any value in exchange as long as it compensated the private landowner for the difference in value in an amount and over a period of time to be determined solely by the Forest Service. The following comment made by the Forest Service on the first draft of the regulations publicly circulated to the industry is revealing in this regard:

"The earlier draft enabled the Forest Service to *take* a private road against the owner's will *and* to make unilateral determination of value." [Emphasis supplied by the Forest Service.]

The Forest Service comment goes on to point out that the revised draft submitted to the industry in March of this year softens the earlier position of the Forest Service. Many responsible persons in the industry, conditioned by the events of the past 2 years, feel that the above-quoted comment could still be

the practical result of the now proposed revised regulations. Other areas of significant inequity in the proposed regulations are:

(1) The Forest Service requires permanent easements from private landowners while being unable to grant permanent easements in return.

(2) Capital investments already made on national forest lands at private expense are not recognized as compensable in determining values to be exchanged in proposed agreements.

(3) Full control of all roads is sought by the Forest Service without corresponding full compensation.

(4) Prompt access will not be given on terms that recognize a compensable interest in investments in roads to be built under a permit.

(5) The landowner is not afforded insurance protection for his property when third parties use his land.

(6) Timber may be required to bear all of the road costs even for public use.

Some of these problems can be alleviated by fair administrative regulations; others can only be resolved by legislation. S. 1147 with a few essential additions and modifications will go far toward settling the problems that can only be resolved by legislation.

CONSIDERATION OF S. 1147

In order to give the subcommittee industry's views in the most understandable manner, we will undertake to review the substance of the bill from our standpoint as well as suggest the additions we believe necessary to protect the interests of users of the national forests, private timber growers and the forest products manufacturing industry.

Section 2

An important purpose of S. 1147 is to help provide access to all areas of the national forests. A major stumbling block, as previously explained, is the inability of the Secretary of Agriculture to grant a permanent easement across national forest land. Section 2 of the bill gives that authority and would, therefore, allow the Secretary to reciprocally exchange permanent easements with timber growers within the national forests.

The Forest Service has stated repeatedly that access to national forest lands for multiple-use purposes is needed in virtually every case in which they are seeking access rights over intermingled private lands or on private roads. Secondly, the Service uniformly insists on permanent or perpetual easements for sustained-yield management of national forests. A third principle asserted by the Service is that easements or rights-of-way granted to the United States must be nonrestrictive so that the Forest Service can have complete unilateral control of the roads serving the lands it manages.

The purpose of restating these Forest Service expressions of road requirements for the national forests is to demonstrate to this subcommittee the basic access principles considered to be essential for management of the national forests. To an equal extent sound management of private forest lands demands application of these same principles.

Additions to section 2

The lumber industry is in complete accord with section 2 of S. 1147 which gives the Forest Service authority to grant permanent easements.

There is, however, a need for additional language which will clarify the implementation of this authority by the Secretary of Agriculture. Guided by the previously mentioned opinion of the Attorney General, the Secretary of Agriculture can condition a grant of access across national forest lands to a timber grower upon receipt of rights-of-way across the timber grower's lands for use by the United States. This opinion should be spelled out clearly in law so that essential property rights do not rest solely upon an easily changed administrative interpretation. More particularly, the limits of this authority should be set forth specifically in the law to provide the necessary investment assurance and stability for both Government and private timber growers. This would, in effect, implement the Attorney General's opinion.

Limit payment to fair market value

To avoid an unreasonable demand by the Government, which both the Attorney General and the Forest Service disclaim any intention of making, an applicant's access to his own land should not be conditioned upon his granting to the Federal Government a right-of-way of significantly greater value. For instance,

where a timber grower needs a bare land right-of-way of several hundred yards across national forest land, in order to reach his property, he should not be denied that access until he gives the Forest Service easements across many miles of his land. The specific language we recommend to accomplish this would be the addition of a sentence at the end of section 2 which would read as follows:

"Such grant may be conditioned upon a valuable consideration not to exceed the fair market value of the easement granted."

In practical operation this addition would mean that, if the Forest Service sought a greater right from the applicant than the applicant sought from the Federal Government, the Forest Service would have to acquire that right by negotiation or condemnation and not by withholding access from the applicant.

Prompt access

This leads to a second addition to section 2 we wish to recommend and urge. As this legislation is designed to encourage reciprocity in exchanging rights-of-way in the national forest, we believe it is important to give private timber growers the right of prompt access similar to that enjoyed by the Federal Government. This was not a problem prior to last year's Attorney General's opinion. Private landowners then had what amounted to prompt access by filing a simple document showing where and how they intended to cross national forest lands. As long as national forest lands were not damaged the application was granted. At the same time the Federal Government reciprocally had the right of condemnation. The Federal Government, of course, continues to have its power of condemnation which assures immediate access to national forest lands under its control. As a result of the Attorney General's opinion there is no longer deemed to be an equivalent right assuring prompt access to private timber growers. In order to restore the balance an addition to section 2 is recommended:

"The Secretary shall promptly grant to an applicant for an easement permission to cross national forest lands to his own land under such terms and conditions as will protect the rights of the Government and its assigns to use the road built across Government lands upon assuming a proportionate share of the construction thereof."

The Forest Service has repeatedly asserted it is their intention to provide prompt access to those who must cross national forest lands to reach their own lands. As there is agreement on this, it is our strong recommendation that the above language be added to the bill to assure it. The last part of the proposed addition simply assures that the applicant would be reimbursed a proportionate share of his road construction costs when the road was used by haulers of Government timber.

Reference has been made to an opinion of the General Counsel for the Department of Agriculture which has come to be known as Opinion 88 holding that private land owners are without authority to reserve to themselves free use of a road built by the Forest Service over their private land. Curiously, however, the Forest Service reserves to itself and its assigns free use of roads built by private parties on national forest lands. The proposed addition would correct this inequity by preventing Government use of a private investment without compensation.

Reciprocity is thus restored. Certainly, if a tree grower has to build roads over Government lands to develop his lands, the Government should have authority to pay for any benefits it gets from the roads if it wants to use them. Conversations with officials of the Forest Service have indicated they would like the Forest Service to be able to pay compensation for the use of private roads constructed on national forest land under permit. We think there is agreement between the industry and the Forest Service on the principle that users of timber access roads should bear their full share of costs.

To reinforce this point it may be necessary to add the following additional language to section 2:

"Any person who, pursuant to permission granted by appropriate authority, has placed an improvement on national forest or other lands administered by the Forest Service shall be deemed to have a compensable interest in such improvement."

A specific example of the industry's concern in this regard and of the need for addition of the above language to section 2 is the experience of the Weyerhaeuser Co., and the Scott Paper Co., in connection with the Cedar Right watershed road use negotiations. On the map before you is a large area of land shown in blue. That land belongs to the city of Seattle and is a part of the

Cedar River watershed, which supplies Seattle with some of the purest water available to any city of its size. The property is also high quality timber-growing land which the city manages as a tree farm.

These companies constructed 98.4 miles of high-standard access road across private, city, and national forest lands in the watershed. The Forest Service wished to acquire an interest in the roads in order to harvest its timber on the lands shown in yellow. Early in the negotiations, agreement was reached that the replacement value of the 79.2 miles located on private and city lands was \$1,189,890. The other 19.2 miles of permanent roads, constructed on national forest lands, under special use permits, had a reasonable replacement value of \$292,500. Even though the Forest Service insisted on proportioning the cost shares on the basis of timber volumes standing in the watershed prior to any cutting, it would not include the \$292,500 as part of the total replacement value of the road system. By taking this position the Government took perpetual rights in 19.2 miles of private roads serving its timberlands which it appraised at nearly \$300,000 without paying 1 cent in compensation.

Another example in a little different vein which demonstrates the need for the proposed addition is the experience of Pope & Talbot, Inc., as reported in 293 F. 2d 822, 9th Circuit (1961). The company had constructed an expensive access road across national forest lands to get to its own forest lands. The road was subsequently flooded by the Hills Creek Dam Reservoir constructed by the Corps of Engineers. It was held that the company had no compensable interest in the portion of the road constructed on national forest lands. There was not then and there still is no way under present law in which the company could obtain an interest for which it could be compensated for its road investments under those circumstances.

In light of industry experience there is an obvious need to afford equitable treatment of timber growers investments in roads constructed on national forest lands.

The forest industry believes that neither the owners of intermingled private lands nor the Forest Service should be allowed to make the final determination of values of the respective property rights of the other where values are in disagreement. We suggest that in the event of disagreement on values the district courts of the United States be authorized to determine the fair market value of easements. We do not anticipate that resort to the courts would be taken in many situations. Confronted with the right to an independent determination of value, both parties will be encouraged in almost all situations to reach agreement.

Section 3

Section 3 of the bill is in the nature of a housekeeping provision which is necessary in order to allow the Government to terminate an easement no longer needed. The lumber industry is entirely in accord with this section.

Section 4

Under present interpretation of existing law the Forest Service may not require a timber sale purchaser to build a road to any standard higher than is necessary for removal of timber from his particular sale. This rule is commonly known as "the prudent operator rule." If the Forest Service desires to build a road to a standard higher than that necessary for harvesting timber from a particular sale, it must use appropriated funds for the additional cost. An example may help: If a single-lane road is adequate to remove the timber being sold in a particular sale, but the Forest Service desires to have a two-lane road in order to provide access to a recreational facility or to harvest additional timber which it may sell in the future, it may require the purchaser to build the first lane of the road, offsetting estimated costs therefor by reduction in the amount the purchaser is required to pay for the timber being purchased; the second lane must be built from appropriated funds. In short, the present practice is to trade some of the timber in the sale for construction of the road necessary to remove the timber from that particular sale.

By section 4 of S. 1147 the Forest Service proposes to change the prudent operator rule, although it does not suggest abolishing it altogether. Section 4 would authorize the Secretary of Agriculture to acquire, construct, and maintain roads necessary for the total management of the national forests, including timber harvesting. It would further authorize the Secretary to require Government timber purchasers to build the type of road needed to

"permit maximum economy in harvesting timber from such lands tributary to such roads." The Secretary would be authorized to pay for the costs of these roads from appropriated funds, by requirements for roadbuilding imposed on purchasers; i.e., trading of timber for road construction, by co-operative financing with other public agencies or private persons, or by a combination of these methods. The change in present practice lies in the provision authorizing financing of roads by requirements imposed on timber purchasers. At this point the prudent operator rule has been abolished since the Secretary would be authorized to require a timber purchaser to build a road to any standard higher than necessary for removing the timber purchased.

The section goes on, however, and by means of a proviso clause reimposes a prudent operator rule less limited in scope and with less protection for a purchase than it formerly had. Under this redefinition, a timber purchaser can be required to build roads of a higher standard than that needed for a particular sale only to the extent that the road's higher standards are contemplated for use in harvesting and removal of timber.

Returning to our example, this means that if the second lane of the road is required because of anticipated heavy traffic in the removal of future timber sales, then the purchaser can be required to build such a road, even though the two lanes are not needed for removal of his own timber sale. But if the second lane is considered necessary because of recreational traffic, for instance, then the purchaser cannot be required to build the second lane; the Secretary would then be required by the proviso to make arrangements other than simply requiring a purchaser to build the entire road as a condition for his sale.

Industry members can foresee several problems under section 4. As now proposed, the section very much increases the possibility under existing Forest Service appraisal and pricing practices that a timber purchaser could incur substantial losses as a result of having to perform road construction in excess of that necessary for removing his timber sale. A second difficulty created by section 4 is that the limitation apparently imposed by the proviso is a more vague and less readily fixed and ascertained standard than is the present "prudent operator rule." A third difficulty which looms large for many mill operators is that they can be required to go into the roadbuilding business even more than is now the case. Any increased obligation for roadbuilding would be acutely burdensome to some operators. The alternative of requiring the timber purchaser to subcontract the roadbuilding is equally unattractive to many who would have to assume the position of a prime contractor in order to finance the subcontract. A fourth problem raised by section 4 is that to the extent timber sale values are traded by the Forest Service for roads, the funds realized from timber sale proceeds are reduced; this means that there is a smaller amount of revenue from timber sales from which the local counties receive 25 percent for roads and schools.

In view of these problems, we propose retention of the present prudent operator rule by changing a few words in the proviso. The italic words are those which we have added and those in black brackets are those we believe should be deleted.

"Provided, That where roads of a higher standard than that needed in a particular sale in the harvesting and removal of the timber and other products from lands tributary thereto are to be constructed, the purchasers of national forest timber and other products shall [not] be required neither to [bear] construct that part of the [costs] road necessary to meet such higher standard nor to bear any of the costs thereof, and the Secretary is authorized to make such arrangements to this end as may be appropriate."

The effect of this amended proviso is not to limit the authority of the Secretary to have multiple-use roads built nor to limit the manner in which he finances the construction of the multiple-use roads. The proviso would not prevent a timber purchaser from agreeing to construct the multiple-use road. The proviso would only make certain that a timber purchaser cannot be required actually to perform or to bear the costs of the construction of a road of a higher standard than is needed to remove the timber in his particular timber sale. There are some additional reasons for giving this section careful consideration from both the standpoint of private timber growers and from the standpoint of national forest timber purchasers which the other witnesses will explain.

Section 5

Section 5 of S. 1147 is a sound housekeeping provision necessary to protect the land records in those counties where permanent interests in lands are executed.

Section 6

Section 6 provides that Forest Service road users may be required to participate in maintenance and reconstruction. We concur provided that costs are shared equitably. We specifically request that timber not be forced to pay road costs for public use. If public use is allowed on a road it should be assigned a proportionate cost share which should generally be financed from appropriated funds. Multiple use of the national forests is increasing and wood should not be forced to bear more than its fair share of the costs. We fear that as the bill now stands wood may be forced to bear all the costs so that public use rides free.

Also the bill does not make clear that reconstruction should in most cases be proportioned among all users. The distinction between what is maintenance and what is reconstruction should be made clear and there should be authority to proportion both. We fear that timber growers and purchasers using national forest roads may be forced to pay costs assignable to the public. Section 6 would be helpful if clarified.

Section 7

Finally, section 7 authorizes the Secretary to receive funds for the purpose of making a payment to the grantor of an easement to the Government. Under this authority the Secretary can pay for the cost of an easement over a period of time by charging use fees to all users. The lumber industry supports this provision.

In summary, it is our firm conviction that approval of S. 1147 by the Congress with the changes that we have recommended will materially contribute to opening up large sections of national forest lands for not only timber harvesting but for all uses of the land on a basis which in the traditional American way protects the rights of private property owners. With this goal in mind, we urge that the subcommittee act favorably upon our recommendations. We wish to thank the chairman for permitting us to express our views on this most important legislation.

Mr. ORELL. In the discussion which was held just a few moments ago by Mr. Nelson and Mr. Florance of the Forest Service, one of the things they brought out and with which we agree is the necessity of access to the national forests for the purpose of fulfilling the needs of the national forests. The recommendations we will make to you today with our confidence in you as a legislative body will be to also protect the needs, in other words, to balance the needs of the national forests with those of private timber growers, who are also in the long-term business of growing trees for successive harvest.

Mr. Florance reviewed the contents of S. 1147; we would call it an omnibus bill, because it covers a number of different subjects. They did not, however, spend too much time in giving you the background of the development over the past few years with regard to the rules by which access to national forests over private lands and vice versa is conducted, and if I may, I would like to spend a few minutes on that.

As Mr. Florance mentioned, the national forests in this country comprise about 190 million acres. This is an area that is twice the size of the State of Montana, nine times that of the State of Maine. Within the boundaries of these national forests are some 38 million acres of private lands which are surrounded by national forest properties of one kind or another.

We recognize the fact that national forest lands are not entirely accessible over public highways. This is also true, however, of the private lands within the national forests because some 38 million acres of these lands must be reached by crossing national forest lands. Of this, approximately 20 million acres are real problems with regard to access and are directly affected by any requirements on access through national forest lands to reach them for management purposes.

Now, in my discussion with you today I am going to refer to examples that come primarily from the Pacific Northwest because this is the area with which I am personally most familiar. I would say, however, that these typify the situations existing in the 12 Western States, and I am sure Senator Metcalf would agree that the situation is similar in Montana as well as in the other Western States with which I know he is familiar.

In addition to that, however, there are many similar situations which exist in the Lake States, the South and the Northeast, wherever national forests exist.

The landownership pattern in the national forests is typified by the areas of railroad land grants. During the early 1800's, as I am sure all of you know, the railroad land grants were given for the purpose of encouraging construction of railroads to develop the West. As a result of these land grants of alternate sections, we have a situation of intermingled landownerships. Perhaps the best example that I can give is the map before you of the Snoqualmie Tree Farm. In the Snoqualmie Tree Farm, if you look at township, 23 north, range 10 east, this square right here [indicating], you see a typical example of the intermingled ownerships. The yellow or buff is national forest land. The green, these little green sections which are 1-mile sections, and are in private ownership. The pink is State ownership. And the white is other private.

As you can readily see when you move east to township 23 north, range 11 east, the Forest Service must have access through private lands, and through State lands in some instances, in order to reach and to manage their own national forest lands. By the same token, in the intermingled area, private owners must be able to cross national forest land to reach their own land and they must be able to have common road systems with the national forests in order to be able to manage for the long term the lands which they have in that intermingled township 23 north, range 10 east.

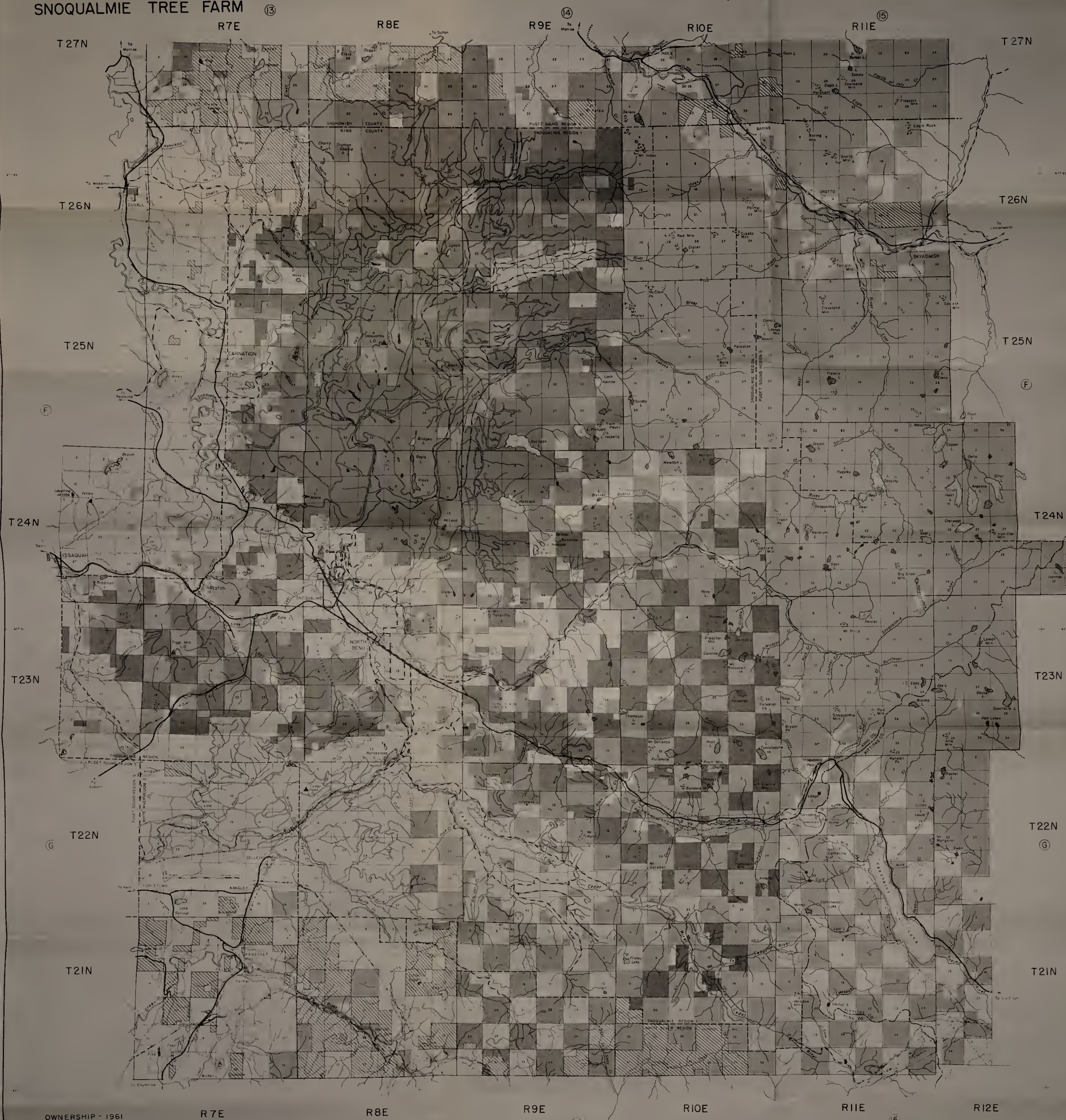
Now, the need for permanent access is one that is absolutely essential to the long-term private grower of trees just as it is to the long-term grower of trees for the Federal Government or a State agency, whatever the case might be. This need for permanent access is particularly acute so far as the private ownerships are concerned. I think you can realize that one of the inherent parts of the value that is involved with private property is the ability to reach it. Timber, as we have said, is a long-term crop. And then more importantly, topography controls the route. One of the problems with road construction in this area; of reaching both private and public lands is the fact that topography controls. In other words, roads must be constructed according to the way the land lies rather than on the basis of the boundaries of the national forests or the boundaries of the private lands.

I have some pictures here to pass around which illustrates this matter of boundaries and road construction.

Here [indicating] is a picture which shows typical construction of a road in an area which will contribute, I am sure, to national forest access as well as to private forest access.

In this case [indicating] we see a solid rock cut which is expensive road construction as I am sure you people on the Subcommittee on Public Roads envision.

SNOQUALMIE TREE FARM ⑬



OWNERSHIP - 1961

- WEYERHAEUSER CO.
- WCO. OTHER THAN REGION 1
- U.S. FOREST SERVICE
- STATE OF WASHINGTON
- CITY OF SEATTLE

SCALE
0 1 2 3 4 5 Miles
Based on Washington Plane Coordinates
(North Zone)

WEYERHAEUSER COMPANY
PREPARED FOR SNOQUALMIE BRANCH
BY TIMBERLAND DIVISION
TACOMA 1960

SNOQUALMIE TREE FARM

PRINT NO. 10

This [indicating] picture is typical of the type of roads that are constructed. On it you see a truck that is an "off-highway" type logging truck. In other words, it carries loads heavier than are permitted on State highway systems or public roads of any kind. It has 10-foot bunks which allow transfer of logs to railroad cars at transfer points, in the case of some companies. It serves as a large mobile pipeline for getting the raw material supplies to the mills.

Incidentally, this is very typical of the type of country we are talking about all over the West, in other words——

Senator RANDOLPH. No guardrails.

Mr. ORELL. No, sir.

Here [indicating] is a typical bridge, although this is a relatively inexpensive bridge. Some of these bridges, depending on the circumstances under which they are built can be as costly as \$100,000 or more. And these roads I am describing to you, and this is why we get to the question of value, are expensive, high-cost roads that cost anywhere from \$25,000 a mile to as much as \$100,000 a mile or more.

With this as a background, there are some other factors in long-term management that are attendant. In the first place, we must have a road system to protect the forests adequately from fire and for salvage logging. I am sure many of you read about the October 12 blowdown on the west coast last year. The private lands and the national forest areas that are reached by roads will have a relatively easy problem of salvage. The orderly harvest of the timber is also important and is made available only by the factor of roads. There must be continued access for general management.

One of the things that we probably should review for you, and I would like to do so now, is the access-granting practices of the past. The central feature of S. 1147 is this matter of granting permanent easements, and you might wonder why this becomes so important in 1963 to the lumber industry.

Over a period of the last 2 years, the rules by which the granting of easements has been carried out or the granting of access perhaps would be a better way of putting it, have been changed materially by opinions and rulings which have no basis in the existing statutes, except that they were reinterpretations of the existing statutes.

The Attorney General's opinion was one ruling that has been referred to by others this morning. Under the Ingress-Egress Act of 1897—which really was the part of the basic organic act which established the national forests—"settlers" were defined as anyone who owned property within the boundaries of the national forests. And therefore, anyone who owned property within these boundaries had a statutory right to reach their property upon request to the Forest Service.

The opinion of the Attorney General, however, dated February 1, 1962, redefined the term "settler." He declared that "settler" meant someone who was actually residing on the land or on a part of his land in the national forest.

In addition, he held that it was proper for the Secretary to condition landowner's access upon receipt of a similar easement or access. What is remarkable about it is not so much that he held in this direction, but the fact that this was an overturning of 65 years of established practice and that it placed in doubt all previous agreements

that had been worked out with the Forest Service with regard to access to both private and national forest lands.

Now, the problem that arose immediately, was the insistence on the part of the Forest Service that it should have permanent easements across private lands while at the same time the Department felt rather strongly that it could not grant easements of a similar nature to the private owners involved. The result over the past 2 years, then, in many instances has been an impasse so far as pending negotiations are concerned.

Senator Metcalf referred to the easement authority of the Department of Interior and the Attorney General's opinion also anticipated this need, in that he referred to the Department of Interior's authority to grant easements. However, the law is not a clear one, and I would like to read it to you specifically and then comment on why the industry does not feel that this is adequate. The law as it stands is a simple one:

In the form provided by existing law, the Secretary of the Interior may file and approve surveys and plots of any rights-of-way for a wagon road, railroad or other highway over and across the national forests, when in his judgment the public interest will not be injuriously affected thereby.

Attorneys for the industry in looking at this law feel that it does relatively little, so far as the matter of permanent easements is concerned.

In the first place, it merely authorizes a filing and approval of survey plots for a road. It does not specify the nature of the right which will be received. The provisions of the easements granted by the Department of the Interior in the past have permitted change by either of the two Departments involved, Agriculture or Interior, or by regulations which they might make.

More importantly, these easements do not run with the land. In other words, if there is a change of ownership, before the easement can be transferred to the new owner, a permission must be granted by one Department or the other or both of them.

It has been cumbersome and it applies, as has been brought out very clearly, to public domain only, and you realize that even in the West under the Weeks law and under other methods of Federal land acquisition such as timberland exchanged in national forests, stumps for stumpage exchange, and so forth, there are a great many scattered parcels of federally acquired land which would interfere even with the Department of Interior's ability to grant these easements.

In other words, we must solve the problem of access authority on the part of the Secretary of Agriculture so that he can grant easements of a permanent nature or on a negotiated basis when it has been worked out with the individual industrial complex with which he is dealing.

S. 1147 does this.

The second ruling which was upsetting, as far as the standard patterns of the past were concerned, was contained in a series of three rulings in the years 1960 through 1961 by the General Accounting Office in which authorization was given the Secretary of Agriculture to charge road use fees to timber haulers. What this really amounted to was a redefinition of the word "tolls" in the Highway Act to allow charging timber haulers fees for amortization or maintenance of roads.

This reversed a longstanding Department of Agriculture position. We had formerly felt that we were common public users along with all other, users.

Senator RANDOLPH. Would you hesitate just a moment, please.

We are privileged today to have with us Mrs. Young of the Washington International Center, and she has escorted to our hearing a group of students from Nigeria, and they are in this country studying under the program that we know as AID.

We are very glad that you came to this hearing. We wish that you might remain longer. Thank you very much.

Mr. ORELL. The GAO rulings, to go back just a word or two, re-defined the word "tolls." Tolls formerly could not be charged on any roads which were built with public money, but the GAO rulings allowed the charging of tolls to the haulers of the timber over Forest Service roads.

As I said a moment ago, this reversed a longstanding Department position in which the timber haulers were common public users, along with recreationists, the general public, and other types of economic use.

The thing that is significant here is the fact that this question was addressed solely to whether or not timber haulers could be charged, and it was not addressed to other users.

The concern of the industry with regard to this series of rulings, is that there is a possibility that timber or the wood products which result therefrom would be bearing the total cost of any improvement or construction of the road to meet all these other uses, whereas there would be only tolls charged on the one use.

A third ruling, which also affected these negotiations during this period of time was Opinion 88, a ruling of the Solicitor General of the Department of Agriculture. This came in 1960.

This opinion held invalid an easement in which a private owner reserved free use of a road which was to be constructed on his land by the U.S. Forest Service. As a result of this ruling, it has become the policy of the Forest Service to refuse any easements which are so conditioned.

In other words, if the private owner doesn't care particularly about the land values involved but merely wants to use the road freely in the future, under Opinion 88 the Forest Service feels rather strongly that it cannot accept an easement under these circumstances.

By the same token, however, the Forest Service continues to maintain its policy of retaining free use of any roads built on national forest land at private expense by a private owner to reach his own timber, which is within the boundaries of the national forest.

This has resulted in friction in negotiations and illustrates one of the problems with which we are faced with regard to access.

Senator RANDOLPH. May I inquire, Mr. Orell, not breaking your continuity of presentation, in reference to the matter of Opinion 88 as given by the General Counsel, does this mean that a landowner must pay for the use of a Government-constructed road on his own land?

Mr. ORELL. This means that the Government could require payment for his use of a Forest Service or Government constructed road on his land; yes.

Senator RANDOLPH. Are you saying that Senate 1147 would affect this condition? How would it affect it?

Mr. ORELL. We have an addition to suggest to you when we get to the specifics of S. 1147, to section 2, which would have an effect on this aspect of the legislation as it stands.

Senator METCALF. Mr. Chairman—

Senator RANDOLPH. Yes, Senator Metcalf.

Senator METCALF. I wonder if it would be well for us to put these General Accounting Office opinions in the course of the record at this point, so we can read with some continuity just exactly what Mr. Orell is talking about.

I ask unanimous consent that they be obtained and inserted in the appropriate place.

Senator RANDOLPH. Yes, Senator Metcalf, that is appropriate and will be helpful as a guideline.

Senator METCALF. And Opinion 88.

(The material referred to follows:)

[Opinion of General Counsel No. 88]

U.S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., April 18, 1960.

Syllabus:

Easements—Right-of-way.

A reservation by the grantor in a deed granting to the United States an easement for a right-of-way of a right to use a road constructed on the right-of-way by the United States is not valid. Any use other than what could be exercised by the grantor as owner of the servient estate under State law must be pursuant to Federal laws and regulations as if no reservation had been expressly set forth in the deed.

The grant of the easement would not fail by reason of the invalidity of the purported reservation.

OPINION FOR R. E. M'ARDLE, CHIEF, FOREST SERVICE

DEAR MR. MCARDLE: Reference is made to Mr. Lindh's memorandum of October 23, 1959, concerning the acquisition of rights-of-way and the effect of reservations in easement deeds for such. The memorandum refers to the Stark-weather right-of-way on the Lobster Creek Road No. 343, in Curry County, Oreg., acquired by deed under the provisions of the Federal Highway Act (title 23 U.S.C.) for use in connection with the administration of the national forests, and to the need for a determination of property rights, if any, reserved in that case. It calls for consideration of the following specific questions:

1. Do you consider the reservation by the grantors of the right to use the road when constructed by the United States valid as to use other than what could be exercised by the grantors under State law if no reservation had been set forth in the deed to the United States?

2. If the reservation in the deed is valid, could the grantors convey rights of use in the road constructed by the United States to third parties?

3. Since the reservation does not subject the use of the road to the Secretary of Agriculture's rules and regulations, would the grantors, their heirs and assigns, be permitted to use the road without regard to said rules and regulations?

A related question is whether, if the answer to (1) is in the negative, then by reason of the invalidity of the purported reservation would the grant of the easement itself fail?

It must be borne in mind that we are concerned here with a land title question presented in a deed of conveyance to the United States. This is quite different from what the case would be if we were concerned only with what could be done by expressed or implied contract between parties who were under no disability and free to carry out the things agreed upon. We are concerned

with the type of easement that is referred to as a "raw land" easement, that is, one for a right-of-way on which a road does not exist but will be constructed by the United States subsequent to the grant of the easement to it. The deed does not expressly grant an exclusive easement but does expressly reserve to the grantor a right to use the road thereafter to be constructed by the United States.

Referring to the questions in the order stated, it is our opinion, for the reasons stated below, that—

(1) The reservation is not valid. Any use other than what could be exercised by the grantor as owner of the servient estate under State law must be pursuant to Federal laws and regulations as if no reservation had been expressly set forth in the deed.

(2) If the reservation were valid, by its terms the right of use thereunder in the road constructed by the United States could be conveyed by the grantor to third parties.

(3) If the reservation were valid, the grantor, his heirs and assigns could use the road constructed by the United States subject only to rules and regulations issued by the Secretary of Agriculture and in effect on the date of his conveyance to the United States.

The grant of the easement would not fail by reason of the invalidity of the purported reservation. The general rule may be stated thus, if a reservation is void, either for repugnancy or because it is contrary to law, the result is to leave the conveyance absolute. *Thompson on Real Property*, section 3471; *Van Orman v. Van Orman* (1942 Ind.) 41 N.E. 2d 693, 698, *Tennant v. John Tennant Memorial Home* (1914 Calif.), 140 P. 242.

In order to bring the specific problem into proper perspective it may be well first to consider under the principles of common law the nature of a reservation and whether a grantor can reserve something that did not exist until after the grant. We must keep in mind that the easement conveyed to the United States was created by the grant, not by reservation, and that the grantor is not reserving an interest in that conveyed but is reserving a right of use in a road to be thereafter constructed by the United States.

A reservation has been defined as "a clause by which the grantor secures to himself a new thing 'issuing out of' the thing granted, and not in esse before." *Tiffany on Real Property*, abridged edition, 1940, page 677, citing among other authorities, Co. Litt. 47A. We believe that it is precisely the purpose of a reservation to create an estate which was not "in esse" or did not exist as such before the reservation was made.

Accepting these views with respect to a reservation the proper application thereof to the facts remains for consideration.

As we view the situation growing out of an express reservation in the grant of a raw land easement to the United States for a road subsequently constructed on the right-of-way by the grantee there are two separate and distinct things created or brought into being which were nonexistent prior to the grant. The first is the easement itself, which is a separate ownership of an interest in land that was brought into being concurrently with and by the grant. The deed to the United States creates and conveys the easement for the purposes stated therein. This has not been questioned. The second is a reservation by the grantor of the right to use the road to be thereafter constructed by the United States on the easement granted. The validity of this reservation is questioned. The "reserved" interest or right thus brought into existence is not carved from that which is conveyed, as the word "reservation," given its ordinary meaning, would require. It purports to relate to an improvement which the grantee may thereafter construct on the estate granted. The reservation in order to be effective, however, must refer to something conveyed, for if the reservation clause purports to reserve rights not embraced in the granting words it is void because of nothing on which to operate. In *re Wisconsin Central Ry. Co.*, 68 F. Supp. 320 (D. Minn.) (1946); *Oliver v. Johnson* (1941 Oreg.) 113 p. 2d 430; *Kesterson et al. v. California-Oregon Power Co.*, (1924 Oreg.), 221 p. 826, reversed on other ground (1924 Oreg.) 228 p. 1092; *Adams v. Morse*, 51 Maine 497 (1863); *Hurd v. Curtis*, 48 Mass. 94, 110 (1843). A reservation does not create title or enlarge vested rights of the grantor. It merely carves out the specified interest from the operation of the grant and leaves it vested in the grantor to whom it belonged prior to and at the time of the execution of the deed. *Leidig v. Hoopes* (1955 Okla.), 288 p. 2d 402; *Ogle v. Barker* (1946 Ind.), 68 N.E. 2d 550. Recognition, therefore, of the principle that by a reservation in a deed the grantor reserves something

that theretofore did not exist should not be confused with the question whether the reservation reaches beyond the estate or interest the deed conveys and attaches to or creates a vested interest in improvements placed upon the granted estate, improvements not in being at the time of the reservation, but brought into being by the grantee subsequent to the grant. To hold that the reservation does not exhaust its force upon the estate or interest granted by the deed in which it appears would purport to place in the grantor an indefinite and to some extent an unlimited right, but nevertheless a vested right, in improvements he never owned.

Certain common law rights of the grantor of an easement for a road are well recognized. Accordingly to 28 C.J.S., Easements, paragraph 91b:

"Unless he expressly agrees to the contrary, an owner of land burdened with a right-of-way may use his land in any manner which does not materially impair or unreasonably interfere with its use as a way."

The same is set forth in 17A Am. Jur., Easements, section 121:

"The owner of the land has the right to use the way for any purpose whatever, provided he does not interfere with the right of passage resting in the owner of the easement. Hence, the grant of a right of way, which is not exclusive in its terms and which can be reasonably enjoyed without being exclusive, leaves in the grantor and his assigns the right of user in common with the grantee."

Tiffany on Real Property, third edition, section 811, agrees:

"The owner of land subject to a right-of-way may himself use the same way, provided this does not unreasonably interfere with the exercise of the other's easement. And he may also grant to another or others a similar right-of-way, subject to the same proviso, and provided further, the prior grant was not intended to be exclusive."

Some of the road cases cited in support of this proposition are the following: *Armiger v. Lewin* (1958 Md.), 141 A. 2d 151; *Van Natts v. Nys* (1954 Oreg.) 278 p. 2d 163, reh. d. 279 p. 2d 657; *Kurs v. Blume* (1950 Ill.), 95 N.E. 2d 338, 25 A.L.R. 2d 1258; *Cusie v. Givens* (1950 Idaho), 215 p. 2d 297; *Stevens v. Bird-Jex Co.* (1933 Utah), 18 p. 2d 292; *Bina v. Bina* (1931 Iowa), 239 N.W. 68, 78 A.L.R. 1216.

All the above cases deal with roads that were in existence at the time that the easement was created. We have found at least one case which deals with a raw land easement where the road was constructed by the owner of the easement. This is the case of *Herman v. Roberts* (1890 N.Y.), 23 N.E. 442. In this case the defendant, the owner of the servient estate, had injured the roadbed by drawing heavy loads over it. The court granted an injunction to plaintiff, the owner of the dominant estate, to prevent defendant from thus injuring the roadbed. However, the court specifically limited the injunction and indicated that defendant could use the road so long as he did not interfere with plaintiff's rights.

We have found two other cases that may involve raw land easements. One is *Campbell v. Kuhlmann* (1890), 39 Mo. App. 628. The court there stated that the grant of a right-of-way which is not exclusive in its terms and which can be reasonably enjoyed without being exclusive leaves the grantor and his assign the right of user in common with the grantee.

The other case is *Holbrook v. Hammond* (1946 Kentucky), 192 S.W. 2d 746. In this case plaintiff, the owner of the servient estate, crossed the road and also used it longitudinally. An injunction was granted preventing defendant from interfering with plaintiff's crossing of the road. Defendant's request for an injunction preventing plaintiff from using the road was denied.

Of further interest in connection with the raw land easement problem is the case of *Van Natta v. Nys, supra*. While this case involved an already existing road, it also involved a road which plaintiff, the owner of the dominant estate, had improved. The court in this case gave the owner of the servient tenement and his assigns the right to use the road, quoting Tiffany and Corpus Juris Secundum at page 170. At page 173, the court says that the owner of a servient estate:

"* * * may also use the way if his use does not unreasonably interfere with the rights of the easement owner. Therefore, the issue which this case presents is this: Does the use of a way by the owner of the servient tenement to such an extent that it contributes to the way's deterioration, but leaves it intact for use by the owner of the dominant tenement, interfere with the rights of the latter to such a degree that an injunction should issue upon the application of the owner of the dominant tenement."

The answer of the court on page 176 is:

"If the defendant's use of the road contributes to its depreciation, the appropriate remedy for the plaintiff is a decree requiring the defendant to bear a proportionate share of the expense of maintaining the road."

Attention is also called to the case of *City of Pasadena v. California-Michigan Land & W. Co.* (1941 Cal.), 110 P. 2d 983, a pipeline case. The court there stated at page 985:

"The general rule is clearly established that, despite the granting of an easement, the owner of the servient tenement may make any use of the land that does not interfere unreasonably with the easement. (Citations omitted.) It is not necessary for him to make any reservation to protect his interest in the land, for what he does not convey, he still retains."

In this case, however, the servient owner was not claiming any right to use the pipeline placed on the easement by the grantee.

In line with the above authorities we believe that the grantor of a raw land easement for a road has a right, without an express reservation thereof, to use the surface of the right-of-way and the road constructed thereon by the grantee if such use does not interfere with use by the grantee. *Herman v. Roberts*, *supra*. We do not find in the common law, however, support for a conclusion that by means of a reservation in an easement deed the grantor thereby becomes vested with any greater right to the use of a road subsequently constructed by the grantee than would have been the case without such a reservation.

Even if it be assumed that between private parties the grantor of an easement for a road may, by a reservation in the deed, have a right by implied grant or otherwise to use the road subsequently constructed by the grantee, there nevertheless are restrictions and limitations imposed upon Government officials that would in our opinion preclude the enforcement of such a right where the United States is the grantee. The Constitution, article IV, section 3, clause 2, provides that Congress shall have the power to dispose of and make all needful rules and regulations respecting the property belonging to the United States. It prescribes the terms and conditions under which its property may be used or disposed of. Administrative officials of the Government have no authority to dispose of its property, in this case the road constructed by it, agree to dispose of it, or agree to a condition that prevents full enjoyment by the United States of the benefits it has purchased or otherwise obtained therein except as authorized by Congress. *United States v. California*, 332 U.S. 40 (1947); *United States v. County of Allegheny*, 322 U.S. 174 (1944); *United States v. San Francisco*, 310 U.S. 16 (1940); *Dale v. Lannon* (1955 N.M.), 279 P. 2d 624; 41 Ops. Atty Gen. No. 39; 39 *id.* 373; 20 *id.* 93; 16 *id.* 152; 4 *id.* 480.

In line with the view that the estate or interest brought into being by a reservation is created by carving out and taking back a part of the estate or interest granted, and the further view that where it purports to vest rights in the grantor to use improvements subsequently constructed by the grantee its validity must rest upon its force as a grant from or contract with the grantee, the validity of such rights must rest, where the United States is the grantee, upon express statutory authority. We find no such authority where the purported reservation pertains to improvements constructed by the United States subsequent to the grant.

If the agreement pursuant to which the easement is granted contemplates as part of the consideration therefor a vested right of use by the grantor in the road to be constructed by the United States, then it is unauthorized. In the acquisition of an easement or other interest in land by the United States any consideration to be granted or paid, except it be specifically authorized by statute, must be appropriated therefor and available for obligation at the time the deed is executed, or if a prior contract of purchase is entered into it must be available for obligation at that time. 41 U.S.C. 11; 23 U.S.C. 203; 31 U.S.C. 627, 665; *Leiter v. United States*, 271 U.S. 204 (1926); 28 Comp. Gen. 553; 4 *id.* 371. In the absence of specific statutory authority, the consideration cannot properly take the form of services rendered by the United States (as by constructing the road) or permitted use of U.S. property (as use of the road it constructs).

If as a condition to the granting of an easement to the United States the grantor insists that he shall have a right to use the road to be constructed by the United States, necessitating the Government's constructing the road to a higher standard or greater capacity than required to meet its needs, such additional construction and the agreement on which it is based would clearly be unauthorized. To conclude otherwise would be to overlook the limitations against the availability of appropriated funds. Such funds are not available, in the absence of statutory authority, to construct a road to a capacity in excess of that needed by the Government, including use permitted by it to the public

in general under applicable rules and regulations. 31 U.S.C. 628; 40 U.S.C. 259, 263; 41 U.S.C. 12, 14.

As we have indicated above, in granting an easement for a road the grantor has under the common law a right to use the servient estate to the extent that it does not interfere with use thereof by the grantee. In the determination of what constitutes interference, when the United States is the grantee, we consider the grantor bound by the principles applicable to lands held or administered by the Government. *Florida State Turnpike Authority v. Anhoco Corporation* (1955 Fla.), 107 So. 2d 51. Generally, the United States holds its property for public purposes. *Van Brooklin v. Tennessee*, 117 U.S. 151 (1886). In the administration thereof its officials must be guided not only by applicable constitutional and statutory provisions but by rules and regulations issued for that purpose. Only within such limitations can the officials permit one member of the public to enjoy a right not enjoyed by the public in general. *Florida State Turnpike Authority v. Anhoco Corporation, supra*; *Holland v. Grant County* (1956 Ore.) 298 P. 2d 832.

Sincerely yours,

EDWARD M. SHULMAN,
Deputy General Counsel.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, December 19, 1960.

The Honorable the SECRETARY OF AGRICULTURE.

DEAR MR. SECRETARY: Reference is made to letter of October 11, 1960, from Assistant Secretary of Agriculture C. M. Ferguson, requesting a decision whether section 301 of the act of August 27, 1958, 72 Stat. 912, 23 U.S.C. 301, providing that all highways constructed under the Federal Highway Act be toll free prohibits the use of funds appropriated to your Department for construction of forest development roads and trails pursuant to section 205 of the act, 23 U.S.C. 205, when such roads are constructed through cooperative agreements between the Forest Service and private landowners under an arrangement described hereinafter.

Section 301 of the cited act of August 27, 1958, provides, in pertinent part, as follows:

" * * * all highways constructed under the provisions of this title shall be free from tolls of all kinds."

The Assistant Secretary explains in his letter that there is an intermingling of Federal and non-Federal land in many of the national forests in the Western United States, and that where this "checkerboard" pattern of landownership exists the construction of access roads in these areas to serve national forest lands or private lands, or both, involves crossing lands in the ownership of both the United States and private parties. He states that generally a single road will serve all parties at less cost to each than separate roads; and that frequently, particularly in difficult terrain, there is only one practical and economical route for such a road.

For these reasons, he says, the Forest Service has in a number of instances entered into cooperative road construction and use agreements with private owners hereinafter referred to as cooperators. The agreements provide for a sharing of road construction costs on an equitable basis, mutual use privileges, grant of an easement across private lands to the United States, stipulations of the cooperator's statutory right of ingress and egress across national forest lands, specifications of the standards for roads and bridges, provisions governing construction, use by others, etc. The Assistant Secretary outlines in his letter various methods of sharing road construction costs under these agreements.

The specific situation giving rise to the question presented for decision relates to cooperative agreements which authorize the cooperator to construct, at his own expense, a forest development road to serve his needs and, in addition, those of the Government and its timber purchasers. To reimburse the cooperator for the construction costs incurred over and above his agreed to share thereof, the agreements provide that the Forest Service will permit use of the road by others for timber hauling on the condition that they will contribute to the cooperator their proportionate share of construction costs up to the point at which the cooperator recovers his share of the costs. The rates and the total amount charged by the cooperator are controlled by the Forest Service, and collections by the cooperator are not permitted to exceed in the aggregate the

portion of the total estimated cost in excess of his share of these costs plus reasonable carrying charges.

In this connection, during an informal discussion of this matter between representatives of the Forest Service and our Office, it was brought out and understood that where a purchaser of national forest timber is also a co-operator who has agreed to construct a better or more extensive road than needed for the particular sale of timber, the road cost considered in the timber appraisal is that appropriate for the needs of the particular sale; the balance or excess costs incurred by the cooperator because of actual construction of a higher grade road is used to compute the sharing of costs between appropriated funds, those to be borne by the cooperator, and those to be collected by the cooperator from other users of the road.

The question for determination here would appear to be whether the payments thus required to be made to the cooperator by road users, who are not parties to the cooperative agreement, constitute the payment of tolls for use of the road intended by the Congress to be prohibited as a condition of the use of Federal funds authorized by the Federal Highway Act of 1921, as amended, for construction of forest development roads.

The Assistant Secretary points out that the intent of this method of sharing road costs between private users is to secure a single road system suitable for heavy hauling; and that the need therefor arises in situations in which there is room for only one road system, or in which a single road system provides the most economical means of transportation. The view is expressed that payments thus made to the cooperator who constructs the road, by users who are haulers of timber, are not in the nature of tolls for use of the road but represent a sharing of the cost of a single road system which is a preferred alternative to the more costly possibility of constructing two road systems.

The term "toll" in relation to highways generally applies to any highway constructed by individuals or by a corporation pursuant to legislative grant which highways are maintained by tolls payable by passengers, the payment thereof being enforced by the use of gates or bars, and the general public being entitled to use of the highways subject only to the payment of toll. See 90 C.J.S. Turnpike & Toll Roads, sections 1 and 4. The word "toll" as used in title 23 of the United States Code, section 301, requiring all highways constructed under the provisions of the title to be free from tolls of all kinds, undoubtedly means the exaction of money from highway travelers who are prohibited from using the highways unless they pay the toll to the parties entitled thereto.

In the light of this definition of the word "toll" we agree with the conclusion of the Assistant Secretary that charges agreed upon between the cooperator and the Forest Service as a basis for the sharing of cooperative road construction costs by private users are not tolls prohibited by the Federal Highway law. See *Bogart v. Westchester County*, 57 N.Y.S. 2d 506, 512-513, appeal dismissed 70 N.E. 2d 531. Therefore, and in answer to the question presented in the letter, you are advised that the terms of 23 U.S.C. 301, prohibiting the payment of tolls for the use of highways constructed under the Federal Highway law, have no application to the cooperative arrangements for national forest road construction under the terms and conditions outlined above.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 3, 1961.

The Honorable the SECRETARY OF AGRICULTURE.

DEAR MR. SECRETARY: Reference is made to letter of May 8, 1961, from Assistant Secretary of Agriculture Frank J. Welch, concerning a problem arising in connection with the acquisition of actual ownership or an interest in existing private roads which could serve national forest timber purchasers.

It is stated, and correctly so, that the Forest Service has been operating on the assumption that the purchase of such roads with funds authorized by title 23 United States Code makes the roads subject to the provisions of 23 U.S.C. 301, which prohibits the charging of tolls for the use of highways constructed under the Federal Highway Act, as amended. However, doubt is expressed whether charges made by the Forest Service on a basis intended to recover only costs

of acquisition or improvement of such roads is required to be considered a toll the payment of which is prohibited by section 301 as a condition of the use thereof.

It is explained that, under the present practice of developing road systems, owners of privately owned land or timber in the checkerboard landownership area who cooperate with the Forest Service pay a share of the cost of joint road systems, whereas the owner of an existing road may delay or refuse to cooperate in the joint use of the road. In the latter circumstances acquisition of the road by the Service through purchase or condemnation is the only reasonable action when the need therefor is critical. Thus, when an owner is compensated for a road so acquired he can use the road, if it is open to other than Government use, without charge unless the toll prohibition of section 301 is inapplicable. This situation, it is suggested, may be a deterrent to cooperative sharing of the cost of developing a joint road system because the cooperator bears a part of such cost whereas an owner may recover all of his cost through sale of the road and then have the use of it without charge.

The specific situation in question concerns the purchase of the Lewis River Road leading into the Gifford Pinchot National Forest in the State of Washington. The funds used therefor were made available to the Forest Service by the Supplemental Appropriation Act, 1960, and the Department of the Interior and Related Agencies Appropriation Act, 1961, Public Laws 86-213 and 86-455, 73 Stat. 440 and 74 Stat. 115, respectively, under the heading "Access Roads," which funds, as stated in the letter, are not subject to the provisions of the cited section 301. The circumstances attending the purchase and use of the road are stated as follows:

"* * * The reservations of the parties who owned the road or had interests in it permit some free hauling, but two of the owners of reserved rights agreed in their easements conveying rights-of-way to the private road constructor to exercise hauling rights subject to reasonable use charges. One of the reservations limits the amount to be paid by haulers from its lands to a proportionate share of the cost of the road paid by the United States to the grantors. A few other private owners who are expected to haul timber over the road at some future time have not been involved in the negotiations. All users who have not reserved free hauling rights are charged at rates designated to recover the proportionate share of the cost of the United States for the purchase of the road, based on the proportion of private and United States timber tributary to the road. In addition, a large share of the capacity is to be used by purchasers of national forest timber who do not pay a use charge, as such, but the price for the timber purchased from the United States is higher because of the availability of the road."

It is further stated that about 10½ miles of the Lewis River Road are now being used by timber haulers and that this section of the road is surfaced with native volcanic rock. Under heavy traffic the surface material grinds into a fine dust which creates an unsafe condition, causes excessive wear on motorized equipment and results in hauling costs that are higher than would be experienced on a better road. To alleviate this condition the Forest Service plans to provide a bituminous surface for the road which may cost over \$200,000 using forest road development funds and cooperative contributions from users.

The questions presented for our decision are (1) whether the use of forest road development funds to so improve the Lewis River Road, which funds are subject to the toll-free requirements of 23 U.S.C. 301, would require discontinuance of the collection of otherwise proper use charges, designed to recover the proportionate share of the cost to the United States for purchase of the road, from haulers of non-Federal timber in the area tributary to the road, and (2) whether it is proper to recover a proportionate share of the cost of such improvement from users who do not make advance contributions therefor and deposit such recoveries into the Treasury as miscellaneous receipts.

Under the terms of 23 U.S.C. 301, all highways, including forest development roads, constructed under the Federal Highway Act of 1921, as amended, are required to be free from tolls of all kinds. (See 23 U.S.C. 201.) In our decision 40 Comp. Gen. 372, 375, rendered to you, the word "tolls" as used in this statute was held to mean the exaction of money from highway travelers who are prohibited from using the highways unless they pay a toll to the parties entitled thereto.

The funds appropriated to the Forest Service used for the purchase of the Lewis River Road were made available for the acquisition of privately owned roads that are required to provide access to national forest timber. The collec-

tion of charges from haulers of privately owned timber in the area who otherwise would be without available access—as distinguished from the general public who are permitted to use the road free of charge—at rates designed to recover the proportionate share of the cost to the United States for the purchase of the road, based upon the proportion of private and Federal timber tributary to the road, is a method of sharing the cost of road acquisition by the parties deriving economic benefits therefrom.

We do not believe that the collection of charges for the transportation of privately owned timber over the Lewis River Road operates to classify the road as a toll road or requires the use charges to be regarded as the payment of a toll. Since effective use of the road contemplates maintenance and improvement, we are of the opinion that the proposed expenditure of forest road development funds to provide a bituminous surface thereon, and the recovery of a proportionate share of the cost from the timber haulers who do not make advance contributions need not be considered as altering or changing the nature of the road and the use charges, or otherwise conflict with the toll-free requirements of roads constructed with forest road development funds.

The questions presented are answered accordingly.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 2, 1962.

B-65972

The Honorable the SECRETARY OF AGRICULTURE.

DEAR MR. SECRETARY: Reference is made to letter of February 2, 1962, from Assistant Secretary of Agriculture Frank J. Welch, calling attention to decisions of this Office, B-65972, of December 19, 1960, and July 3, 1961, 40 Comptroller General 372, and 41 Comptroller General 1, respectively. These decisions concerned the problems of the Forest Service as to the sharing of costs with private landowners in the development of timber access roads systems in the National Forest areas of mixed or "checkerboard" ownership of land.

The Assistant Secretary's letter points out that the Forest Service has several mixed landownership situations where access roads are needed to serve national forests purposes, and the landowners are not willing, or not prepared at the time the Government is ready to proceed, to cooperate in the construction of the road.

In those timber areas within the National Forest where there is a large percentage of privately owned timber, only a part of the road system can be financed by purchasers of the initial harvest of National Forest timber because the harvest will not support the entire burden on the development cost of the access roads. It is pointed out that, if private timber owners are not willing or able to accomplish a share of the construction concurrently with the Government program, harvest will be commercially feasible only if a portion of the road construction cost is met from funds subject to 23 U.S.C. 301. These provisions prohibit the charging of tolls for the use of highways constructed with funds authorized thereunder.

It is further pointed out that in other areas it will be necessary for the Forest Service to initially construct the main roads into heavily mixed landownership areas entirely from funds appropriated under the provisions in title 23, United States Code. In some cases it will be necessary to purchase from these funds the necessary interests needed in private roads which together with Forest Service construction will provide the main access to privately owned tracts as well as the national forest resources.

The Forest Service proposes to recover the proportionate share of cost of the roads of the two types cited from the benefiting landowners at the time they use the roads. The cost sharing principles for such roads generally would be the same as those followed in the earlier decisions referred to above, 40 Comptroller General 372 and 41 Comptroller General 1. The concurrence of this Office is requested as to the general application of the principles announced in these published decisions to the plan set forth in the instant letter where the development of an access road system will be entirely from funds provided under title 23, United States Code.

In 40 Comptroller General 372 and 41 Comptroller General 1, there was recognized the cooperative arrangements in kind, or monetary contribution, insofar as the provision, by construction, or purchase, of a road system for hauling timber from tracts of mixed Government and private ownership within the national forest. Where voluntary cooperation was not obtainable and the United States provided the road or an improvement thereof, the collection of costs from timber haulers using the road was not regarded as a toll collection barred under 23 U.S.C. 301. The instant case involves the application of the same principles.

Accordingly, in those instances where the Government has provided the road system by construction and purchase of interests in private roads as a necessary incident to such construction from funds provided under title 23, United States Code, the recovery of costs from the benefiting landowners proportionate to their share upon use of the road is not to be regarded as an exaction of a toll barred under the provisions of 23 U.S.C. 301 but rather as a deferred payment of the cost-sharing charges for the construction of the road system.

The question set forth in the letter of February 2, 1962, are answered accordingly.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

FEBRUARY 20, 1962.

The Honorable the SECRETARY OF AGRICULTURE.

MY DEAR MR. SECRETARY: The Attorney General has requested me to advise you that, if you approve, he should like to have published, in accordance with 5 U.S.C. 305, his opinion to you on the interpretation of 16 U.S.C. 478 and related statutes which I am transmitting herewith. Although the Attorney General approved this opinion on February 1, 1962, he requested me further to review it prior to transmitting it to you. Hence the delay in transmittal.

* Please let me know whether you have any objection to the publication.

Sincerely,

BYRON R. WHITE,
Acting Attorney General.

FEBRUARY 1, 1962.

The Honorable the SECRETARY OF AGRICULTURE.

MY DEAR MR. SECRETARY: This is in reply to your letter of August 2, 1961, requesting my opinion on several questions arising in the administration of the national forests under the act of June 4, 1897, 30 Stat. 36, 16 U.S.C. 478.¹ The substance of the inquiry is whether you have the authority to grant a permit to use an existing road in, or to build a new road across, a national forest on the condition that the applicant for that permit confer on the United States a reciprocal benefit with respect to his own property; i.e., that he permit the United States to use roads existing on it or to build new roads across it in order to reach national forest lands.

Your General Counsel has explained the factual circumstances underlying your inquiry. In many parts of the country, especially in the checkerboard lands of the Northwest,² much privately owned timber may be reached only by crossing national forests, and, conversely, private property frequently must be crossed in order to obtain access to national forests. During the past years, private landowners—even those who have been permitted to build roads across national forest lands in order to get to their own timber—have become reluctant to per-

¹ That act, as codified in title 16 of the United States Code, provides in pertinent part:

"SEC. 478. Nothing in sections 473-482 and 551 of this title shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of national forests, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of Agriculture. Nor shall anything herein prohibit any person from entering upon such national forests for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof. Such persons must comply with the rules and regulations covering such national forests."

The scope of the act of June 4, 1897, 30 Stat. 36, is limited to national forests reserved from the public domain. This opinion, therefore, does not apply to national forests reserved from property acquired by the United States under the Weeks Act of Mar. 1, 1911, 36 Stat. 961.

² Cf. *Camfield v. United States*, 167 U.S. 518.

mit the Forest Service to build new roads or use existing ones over their own lands in order to reach national forest enclaves. As a result, the Forest Service has had to delay a considerable portion of its development program.³ I understand that the disinclination of landowners to permit the Forest Service to cross their property may be explained in part by the intensification of land use and the rapid growth of land values, and to some extent by the circumstance that your Department can grant to the private owners only temporary revocable permits to cross national forests,⁴ while the Forest Service for practical and fiscal reasons usually must insist on obtaining a permanent right-of-way over private property.⁵

This problem apparently came to a head in 1950. In regulations issued in that year with respect to certain timberlands under its jurisdiction, the Department of the Interior⁶ took the position that it was the responsibility of that Department to obtain access to the timberlands administered by it (43 C.F.R. 115.155 (b) and (c)). On the basis of this finding, 43 C.F.R. 115.155(d) provides that where the Department of the Interior grants a right-of-way to a private operator, the latter may be required in appropriate circumstances to grant to the United States or to its licensees rights-of-way over property controlled by him directly or indirectly, or the right to use existing roads or road systems built by the private operator.⁷

At about the same time, the Chief of the Forest Service sought an opinion of the Solicitor of the Department of Agriculture as to whether the Department of Agriculture could use similar regulations. A memorandum, prepared in the Solicitors' office, but not signed by the Solicitor, came to the conclusion that such requirements could not be imposed legally on persons owning property within the boundaries of national forests. The memorandum took the position, first, that the statutory right of "egress and ingress," provided for in 16 U.S.C. 478, was not limited to "actual settlers residing within the boundaries of national forests" in the technical sense; i.e., to a person who, under the Homestead and related acts, has entered upon the public lands as a cultivator of the soil and who lives in a habitable dwelling he has placed upon the land.⁸ It reasoned, on the basis of its reading of the legislative history of the act of June 4, 1897, *supra*, that Congress intended to confer a statutory right of egress and ingress on everyone who owned property within the boundaries of national forests. Second, the memorandum concluded that the authority of the Secretary of Agriculture to issue rules and regulations concerning the construction of wagon roads across national forests by persons having a right of egress and ingress was limited to the location of the road, and to the prevention of injury to the forest and of interference with its administration; hence, that he could not require a person who had a right of egress and ingress to give to the United States a reciprocal right to cross his own land. With respect to persons not having a right of egress and ingress the memorandum indicated that it might be permissible to impose such conditions. I understand that, while the then Solicitor of your Department did not sign this memorandum, your Department nonetheless adopted the views expressed in it.

In June 1953, your predecessor in office amended the regulations pertaining to permits for the construction and use of roads and trails over national forests so as to eliminate the then existing requirement of a permit "where there is a statutory right of ingress or egress." 36 C.F.R. 251.5(d) provides that:

"(d) The right to construct or use roads on national forest land for purposes of ingress and egress to and from privately owned property within the

³ See also "Federal Timber Sales Policies," joint hearings before a Special Subcommittee on the Legislative Oversight Function of the Committee on Interior and Insular Affairs, U.S. Senate, and the Subcommittee on Public Works and Resource of the Government Operations Committee, House of Representatives, 84th Cong., 1st and 2d sess., vol. 2, p. 2051.

⁴ The act of Feb. 1, 1905, 33 Stat. 628, 16 U.S.C. 472, transferring to the Department of Agriculture a large part of the jurisdiction over national forests then exercised by the Department of the Interior, has been implemented by an agreement between the two Departments pursuant to which the Department of Agriculture may grant temporary permits to occupy and use national forests which "if granted, will in nowise affect the fee or cloud the title of the United States should the reserve be discontinued," while the Department of the Interior "retains jurisdiction over all applications affecting lands within a forest reserve the granting of which amounts to an easement running with the land * * *," 33 L.D. 60, 610 (1905).

⁵ "Federal Timber Sales Policies" (*supra*, n. 3), p. 2051.

⁶ Circular 1751 of Apr. 5, 1950, 19 F.R. 1971, 43 C.F.R. pts. 154 to 179.

⁷ 43 C.F.R. 244.52 extends these regulations to applications for permanent rights-of-way across national forests reserved to the Department of the Interior pursuant to the act of Feb. 1, 1905, 33 Stat. 628, 16 U.S.C. 472, and to the agreement between the Departments of Agriculture and of the Interior implementing that statute. Cf. *supra*, n. 4.

⁸ For a more detailed discussion of the term "actual settler," see *infra*, p. 62.

exterior boundaries of a national forest reserved from the public domain will be recognized when (1) the applicant is the owner of such property, (2) a roadway across such national forest land is necessary to enable the applicant to reach or utilize his property therein, and (3) the construction and use of the roadway is in accordance with the rules and regulations governing the occupancy, use and preservation of the national forests."

Under the 1953 regulations, your Department accordingly administers 16 U.S.C. 478 as if the words "actual settlers residing within the boundaries of national forests" read "any person or corporation owning property within the boundaries of national forests," and construes the right of ingress and egress as including the right to construct wagon roads. The effect of this interpretation is that a lumber corporation may construct or use roads across national forests without having to pay for this privilege, while the United States has to pay just compensation to the same corporation when it seeks to cross that company's property in order to obtain access to its own forest lands.

This interpretation of 16 U.S.C. 478 by your Department has not remained unchallenged. When it was brought to the attention of Congress during the joint hearings on Federal timber sales policies, conducted in 1955 and 1956 by subcommittees of the Senate Committee on Interior and Insular Affairs and of the House Committee on Government Operations,⁹ the subcommittee chairmen asked the Legislative Reference Service of the Library of Congress for its interpretation of that section. The latter concludes that the legislative history on which your Department relies was far from conclusive and that it was insufficient to justify a departure from the clear and technical statutory language.¹⁰ The House Committee on Government Operations apparently agreed with the Legislative Reference Service since it recommended that your Department should adopt the practice of the Department of the Interior, and require in appropriate cases that applicants for the construction of wagon roads across national forest lands grant reciprocal rights to the United States (cf. *supra*, p. 4).¹¹ Similarly, this Department has taken the position in the Minnesota Wilderness Area cases¹² that the words "actual settlers residing within the boundaries of national forests" were used in a narrow technical manner in 16 U.S.C. 473, and that they do not cover every natural person or corporation owning property within the boundaries of national forests.

I understand that you now want to reexamine the position taken by your Department. In this connection, you have asked me the following two specific questions:

"1. Did the act of June 4, 1897 (16 U.S.C. 478), contemplate that 'actual settlers residing within the boundaries of the national forests' shall include any firms, corporations or persons other than a person 'who goes upon the public land with the intention of making it his home under the settlement laws'?"

"2. Does the Secretary of Agriculture, under the act of June 4, 1897 (16 U.S.C. 478), or any other act pertinent to the national forests, have the authority to include, as a condition of the grant of a right to cross national forest land, the receipt where needed, [of a right] to cross lands owned or controlled, directly or indirectly, by the applicant? (If the answer is in the affirmative, are there any special exceptions?) Collaterally, may the Secretary of Agriculture, utilizing 16 U.S.C. 625, request the Secretary of the Interior to apply this policy should the Secretary of Agriculture desire an easement to be granted?"

Ordinarily, in order to avoid conflicts with judicial tribunals, my predecessors have refused to issue opinions in situations similar to that here presented, i.e., in which there is a substantial likelihood that the issue discussed in the opinion will become the subject of litigation.¹³ Nevertheless, special circumstances exist in this instance which seem to me to justify a departure from this general practice.

⁹ "Federal Timber Sales Policies" (*supra*, n. 3), vol. 2, pp. 1454-1455.

¹⁰ "Federal Timber Sales Policies," report submitted to the Senate Committee on Interior and Insular Affairs by its Subcommittee on the Legislative Oversight Function, committee print, 84th Cong., 2d sess., pt. II, pp. 187-231.

¹¹ H. Rept. No. 2960, 84th Cong., 2d sess., pp. 11-12.

¹² Cf. the briefs and memoranda filed by the United States in *Perko v. United States*, 204 F. 2d 446 (C.A. 8), certiorari denied, 346 U.S. 832; *Bydlen v. United States*, 175 F. Supp. 891 (C. Cl.); and *Mackie v. United States* (D.C. Minn., Fifth Division, No. 5-60-45 Civil).

¹³ See, e.g., 31 Op. A.C. 86, 87; 37 Op. A.C. 34, 42; 41 Op. A.C. Mo. 46.

In the first place, your General Counsel has expressed the view that you have neither the duty nor even a discretionary authority to require a persons or corporation owning property within the boundaries of a national forest and desiring to build a new road in that forest or to use existing roads therein to grant reciprocal rights to the United States. Should I refuse to supply you with the opinion you have requested, you would be placed in the position of either having to follow your General Counsel's view in your administration of the statute, with the consequence that the scope of your authority could not be determined judicially or otherwise, or of disregarding his view without further legal advice. My failure to issue an opinion consequently would place you in an awkward position. Further, in the Minnesota Wilderness Area litigation, this Department has already taken a position, contrary to that of your General Counsel, on one of the issues raised by your inquiry.¹⁴ In those unusual circumstances, I believe that I have the obligation to depart from the normally applicable rule of declining to render an opinion where the issues presented in it are likely to become the subject of litigation.

For the reasons hereafter set forth in detail, I have reached the conclusion that the first question should be answered in the negative. With respect to the second question, it is my opinion that subject to one exception discussed below¹⁵ you have the discretionary authority in cases which you consider appropriate to condition the grant of a right to use existing or to construct new roads on national forest lands on the grant by the applicant of a reciprocal right to the United States.

I

16 U.S.C. 478 is derived from the act of June 4, 1897, 30 Stat. 36, referred to by the Forest Service as its Organic Administration Act. The section may be divided into three parts: The first part provides that nothing in 16 U.S.C. 473-482 and 551—i.e., the act of June 4, 1897—shall be construed as prohibiting the egress and ingress of actual settlers residing within the boundaries of national forests. The second part permits actual settlers residing within the boundaries of national forests to construct such wagon roads and other improvements in national forests as may be necessary to reach their homes and utilize their property under such rules and regulations as may be prescribed by the Secretary of Agriculture. The third part authorizes any person to enter the national forests for all proper and lawful purposes, provided he complies with the rules and regulations covering the national forests.

Accordingly, 16 U.S.C. 478 deals with actual settlers in two ways. First, it provides that "[n]othing," in the 1897 act, "shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of national forests * * *." This provision, however, merely relates to ingress and egress, i.e., the right to cross the national forests and to use existing roads and trails.¹⁶ The right of actual settlers to construct wagon roads is dealt with separately and is made subject to two qualifications. The roads may be constructed only to reach their homes and to utilize their property and, even when constructed for such a purpose, the right to construct a wagon road is made subject to "such rules and regulations as may be prescribed by the Secretary of Agriculture."

The significance of the first question you have asked, therefore, relates primarily to what classes of persons have a right to bare ingress and egress, i.e., to the use of existing roads and trails. It may also have, as will be shown *infra*, page 28, some relevance to the source of your authority to impose a reciprocity requirement on a permit to construct wagon roads. Moreover, although the language of the section indicates that Congress intended significant differences between the two rights, it is conceivable that in special circumstances enjoyment of an effective right of ingress and egress may require the construction of roads. Accordingly, it is possible that these two rights may overlap in some circumstances. In addition, in the administration of your rulemaking power with respect to the construction of wagon roads you may wish to give special consideration to the applications of actual settlers, irrespective of their legal rights.

¹⁴ The issue in the Minnesota Wilderness Area cases here relevant is the question whether the term "actual settlers residing within the boundaries of national forests" extends to every person owning property therein. The question of reciprocity did not arise in those cases.

¹⁵ I.e., the situation in which an actual settler residing within the boundaries of a national forest seeks the right to use existing roads over national forest lands, see *infra*, p. 63.

¹⁶ This right of egress and ingress is recognized in the Trespass Regulations issued by the Department of Agriculture, cf. 36 CFR 261.2(1), (m).

The term "actual settler" has had a well-established meaning as it relates to the public lands of the United States. It describes a person who contemplates "seeking a home on the public lands as a cultivator of the soil" (*Lytle v. State of Arkansas*, 22 How. 193, 206), or one "who goes upon the public land with the intention of making it his home under the settlement laws, and does some act in execution of such intention sufficient to give notice thereof to the public." *United States v. Atterbery*, 8 L.D. 173, 176 (1889), *aff'd* 10 L.D. 36, 38 (1890). *United States v. New Orleans Pac. Ry. Co.*, 248 U.S. 507, 516, described an "actual settler" as a person who "had the qualifications named in the homestead law, was expecting to acquire title under that law, had placed on the land a habitable dwelling in which he and his family were living, had cleared, fenced and was cultivating several acres and was asserting a claim to the entire tract."¹⁷

These definitions highlight two points: First, the settler must be a person claiming under the settlement or homestead laws, the benefits of which have been traditionally limited to natural persons to the exclusion of corporations.¹⁸ Second, the settler must actually be residing on the land.¹⁹ 16 U.S.C. 478 accentuates the second point by its express requirement that the beneficiary of the right of egress and ingress must be a settler "residing within the boundaries of national forests." Wagon roads may be constructed "to reach their homes."

It follows that the term owner is not synonymous with "actual settler." This view of the meaning of 16 U.S.C. 478 is consistent with the language of the act of June 4, 1897,²⁰ as well as with its legislative history. An examination of that history discloses that at the time of original enactment, Congress was aware of the technical meaning accorded to the term "actual settler," and that the Senate defeated an amendment of 16 U.S.C. 478 expressly designed to extend the grant of the bare right of egress and ingress from actual settlers residing within the boundaries of national forests to all persons owning property therein.

Title 16 U.S.C. 478 was a part of a rider added to a sundry Civil Expense Appropriation Act in the Senate, after the bill already had passed the House of Representatives.²¹ The amendment, which had been prepared in consultation with the Department of the Interior (30 Congressional Record 900, 901), was introduced by Senator Pettigrew on behalf of a group of Western Senators in order to alleviate the impact of President Cleveland's Executive order of February 22, 1897, which had placed approximately 22 million acres of public lands in the forest reserve.²² The original debate on the Pettigrew amendment in the Senate (30 Congressional Record, 899-902, 908-925)²³ did not touch upon rights of egress and ingress. It indicated concern for the rights of actual settlers to cut firewood (cf. 30 Congressional Record 901, 902, 912, 920), for the ability of mining companies to obtain the lumber necessary for their operations (cf. *id.*, at 908, 912-914), and for the status of settlers who had not been able to obtain patents to their property because the land had not been surveyed (*id.*, at 901).

During the debate in the House of Representatives on the question whether to concur in the Pettigrew amendment or to insist on a conference (*id.* at 961-971, 1005-1013), Representative Lacey explained that under the amendment the homesteader's "rights of ingress and egress are preserved" (*id.* at 964). Representative Castle explained (*id.* at 1007-1008) that the term "actual settler" was limited to persons cultivating agricultural or grazing lands under the Homestead and Preemption Acts, but that it did not apply to persons who had acquired timberlands under the Timber and Stone Act of June 3, 1873 (20 Stat. 89). The refusal of the House of Representatives to agree with all aspects of the Pettigrew and other amendments (30 Congressional Record, 1013, 1033) made it necessary to refer the bill to conference.

During the Senate debate on the conference report (*id.* at 1242-1243, 1278-1285), some of the same Western Senators, on whose behalf the Pettigrew amendment originally had been introduced, moved to change the clause "actual settlers residing within the boundaries of national forests" to "bona fide settlers or owners within a reservation" (*id.* at 1278-1281). This motion was made

¹⁷ See also *Great Northern Ry. Co. v. Head*, 270 U.S. 539, 545-546, and *Oregon & Cal. R.R. v. United States*, 238 U.S. 393.

¹⁸ Cf. R.S. 2289, 2290, as amended, 43 U.S.C. 161, 162.

¹⁹ Cf. R.S. 2289-2291, 2297, as amended, 43 U.S.C. 161, 162, 164, 169.

²⁰ In the act, the paragraph immediately following what is now 16 U.S.C. 478 expressly distinguished between "settlers" and "owners."

²¹ For the text of the rider, as originally introduced, see 30 Congressional Record, 899-900.

²² Ino, "The United States Forest Policy," 130-142.

²³ There are no relevant committee reports.

although this part of the conference report (*id.* at 1242-1243) had retained the original wording of the Pettigrew amendment. Senator White, the principal spokesman for the Western Senators during this debate, sought to justify this proposal by pointing to the narrow technical meaning of the term "actual settler" and expressed fear that the grantee of an actual settler would be denied a right of egress and ingress (*id.* at 1278). In a similar vein, Senator Cannon pointed to the case of a settler who owned land within a reservation, but whose residence happened to be located on the outside (*id.*, at 1279).

Senator Berry opposed the proposed change, and showed that these apprehensions were unfounded. Referring to the third clause of 16 U.S.C. 478, he explained:

"Now, then, there is an express provision that any person can enter for all lawful and proper purposes, under such rules and regulations as shall be made by the Secretary of the Interior. Does anyone suppose that a man fit to be Secretary of the Interior of the United States would, under that provision, make a rule and regulation that because a man happened to reside in a town beyond the limits of the reservation he could not be permitted to have egress or ingress from his home to his possessions therein? I think such a construction would be exceedingly technical and exceedingly narrow." (*Id.* at 1279-1280.)

And Senator Allison, the sponsor of the appropriation bill to which the Pettigrew rider had been attached, voiced the opinion that, as a matter of general law, a person normally would have the right to cross Government lands in order to reach his own property, and that was no intent to deprive any person of that right (*id.* at 1278, 1282). The remarks Senators Berry and Allison made did not, however, indicate that the term "actual settler" was being used in the act in other than its technical sense. Rather they emphasized, and relied upon, the exercise of a sound discretion by the Secretary.

The amendment in which the language of 16 U.S.C. 478 was incorporated had been added to a badly needed appropriation bill by the same group of Senators who now wished a further change in its language. The rules of the Senate at that time permitted only acceptance or rejection of a conference report (*id.* at 1281). It was therefore pointed out that further consideration would cause substantial delay and that curative legislation could be enacted in the future (*id.* at 1282-1283). The Senate thereupon concurred in the conference report (*id.* at 1284-1285), and the later discussion in the House of Representative (*id.* at 1397-1401) did not touch upon the issues here involved.

In sum, the legislative history discloses a desire to protect explicitly only the rights of ingress and egress of "actual settlers" in the technical sense of the term. It contains statements expressing confidence that other owners of property would not be unreasonably excluded by the Secretary, and notes that further protection of their interests, if required, could be supplied by future legislation. The language of the act and its legislative history, in particular its stress on the residence requirement, indicate a clear congressional purpose to include in the term "actual settlers residing within the boundaries of national forests" the original settler who resides on the land and to exclude from it corporations or other business entities which, within the boundaries of national forests, own property which never was "settled" under the homestead laws. To include those business entities in the term, "actual settlers residing within the boundaries of national forests" would be to read into the legislation precisely the amendment which was proposed and rejected. Between these two extremes there are a number of intermediary types of property owners.²⁴ This opinion does not consider whether they are "actual settlers" within the meaning of the act. None of these may give rise to an actual problem. If they do, they will have to be decided on their specific facts.

²⁴ There are many possible variations. To name but a few: A natural person who resides on the land and cultivates it and who is the heir of an actual settler residing on the land; a natural person who resides on the land but does not cultivate it, and who is the grantee of an actual settler residing on the land; a corporation which uses the land for lumbering purposes and which is the distant grantee of an actual settler who had resided on the land. The legislative history cited above contains expressions of fear that the grantee of an actual settler would not be protected in rights to ingress and egress (*cf. supra*, p. 17), and there is authority for the view that the term refers only to the original settler who entered on public land under the homestead and similar laws and therefore does not include those who take from him by grant or descent. See, however, sec. 2 of the act of February 8, 1887, 24 Stat. 391, which expressly protects the rights of the heirs and grantees of actual settlers.

II

The second question posed by you relates to the conditions which you may attach under 16 U.S.C. 478, or any other act pertinent to the national forests, to permits to cross national forest lands. As I pointed out above: 16 U.S.C. 478 deals with three situations: (1) The right of actual settlers to egress and ingress; (2) the right of actual settlers to construct wagon roads; and (3) the right of persons other than actual settlers to enter national forests for all proper and lawful purposes. The last situation may be subdivided into the rights to meer egress and ingress, in particular the right to use existing roads, and the right to construct wagon roads. The statute provides that the second and third rights are subject to the rules and regulations to be issued by the Secretary of Agriculture.

I shall address myself first to the right of egress and ingress of actual settlers, in particular their right to use existing roads, and the rights of persons who are not actual settlers to use such roads. The statute states expressly that nothing in the act (i.e., 16 U.S.C. 473-482 and 551) shall interfere with the rights of egress and ingress of an actual settler residing within the boundaries of national forests. One of the portions of the act not to "be construed as prohibiting the egress and ingress of actual settlers" is the paragraph (now 16 U.S.C. 551) pursuant to which the Secretary of Agriculture "may make such rules and regulations and establish such service as will insure the objects of such reservations; namely, to regulate their occupancy and use and to preserve the forests thereon from destruction."

Your Department has taken the position that, in spite of the seemingly absolute prohibition in 16 U.S.C. 478 of any interference with the actual settlers' egress and ingress, those rights, nevertheless, are subject to reasonable regulation under 16 U.S.C. 551 "for the protection and preservation of the national forests."²⁵

I see nothing in the legislative history inconsistent with this view. Such regulations can legitimately govern speed limits, traffic laws, regulation of the weight of vehicles, and other matters of a police or protective nature not imposing unreasonably burdensome or onerous conditions on egress and ingress. I believe, however, that the legislative history discloses a special concern that egress and ingress "by actual settlers residing within the boundaries of national forests" shall not be subjected to onerous conditions, and agree that the limitation of this right by the imposition of a reciprocity condition requiring use of a settler's property by the United States might well fall within the prohibition of the first sentence of 16 U.S.C. 478.

The prohibition contained in the opening clause of 16 U.S.C. 478, however, does not extend to the entry upon the national forests by persons who are not actual settlers, including their right to use existing roads. To the contrary, 16 U.S.C. 478 expressly subjects those rights to the Secretary's rulemaking authority under 16 U.S.C. 551. The Supreme Court has held that 16 U.S.C. 478 and 16 U.S.C. 551 must be read together. *United States v. Grimaud*, 220 U.S. 506, 507, 515. The question therefore remains whether these sections confer on you the authority to subject permits to enter national forests—which include the rights to use existing trails or roads—issued to persons who are not actual settlers to the requirement that the applicant grant to the United States a right of substantially similar value to use existing private roads or to construct new roads over private property. In my opinion, your rulemaking power is sufficiently broad to permit the imposition of these conditions.

Except as already described, the legislative history of the act of 1897 contains no discussion relating to the reciprocal rights of the United States, actual settlers, or others, to use existing or to construct new roads. However, subsequent judicial authority does bear upon the scope of the authority of the Secretary of Agriculture under the act of June 4, 1897. Congress has the constitutional authority to enable the Secretary to issue regulations as prescribed in 16 U.S.C. 551. *Light v. United States*, 220 U.S. 523, 526, and this section confers upon the Secretary a "broad scope of regulation" intended to "be effective." *Shannon v. United States*, 160 Fed. 870, 873 (C.A. 9); *Chicago Mil. & St. P. Ry. v. United States*, 218 Fed. 288, 298 (C.A. 9), aff'd, 244 U.S. 351.

²⁵ Letter of your General Counsel dated Sept. 27, 1961, app. p. 1.

More specifically, the courts have concluded that the powers and responsibilities of the Secretary of Agriculture under 16 U.S.C. 551 and related statutes are not limited to the management of the property owned by the United States but that they constitute the necessary statutory authority for the acquisition of access roads to national forests by purchase or condemnation where this is necessary for their protection and management. *United States v. Threlkeld*, 72 F. 2d 464, 465-466 (C.A. 10) certiorari denied, 293 U.S. 620; *Polson Logging Co. v. United States*, 160 F. 2d 712, 715 (C.A. 9). The Department of the Interior and Related Agencies Appropriation Act, 1962, Public Law 87-122, 75 Stat. 246, 258, cites the act of June 4, 1897, as amended, as the substantive authorization for an appropriation for "acquiring by condemnation or otherwise additional roads needed for access to national forest lands * * *." Consequently, the procurement of access roads to national forests is a recognized function of the Secretary of Agriculture in connection with his administration of national forests.

Further, in *United States v. Grimaud*, supra, it was held that under his rule-making authority, the Secretary could impose a fee for a "lawful and proper" use within the meaning of 16 U.S.C. 478—in that case grazing—of a national forest by an individual not an actual settler, where the fee required had a reasonable relationship to the objects of the rulemaking power conferred by 16 U.S.C. 551. "These fees were fixed to prevent excessive grazing and thereby protect the young growth, and native grasses, from destruction, and to make a slight income with which to meet the expenses of management." 220 U.S. at 521, 522.²⁶ The authority to impose that fee was not expressly conferred by the act of June 4, 1897, and I can see no significant legal difference between the requirement of payment of a fee and the requirement of the grant of a valuable privilege if in each case what is required bears a reasonable relationship to the objects of that legislation. Therefore, if you should determine that the use of privately owned roads or the construction of roads over private property is necessary to the preservation or management of the forests, I see no reason to read the pertinent statutes as denying you authority to issue regulations conditioning the use of existing roads within national forests (other than for egress and ingress of actual settlers), upon the grant to the United States of a reciprocal right.

Such a regulation would meet the basic test for imposing conditions attached to the use of Government property or facilities. It would be "relevant to Federal interest in the project and to the overall objectives thereof." *Tranhoe Irrigation District v. McCracken*, 357 U.S. 273, 295.

In *Federal Power Commission v. Idaho Power Co.*, 344 U.S. 17, the Supreme Court dealt with a situation somewhat similar to that presented here. The Court held that, since the Federal Power Commission had been given the responsibility to permit the use of public lands for the transmission of private electric power where "appropriate, expedient, and in the public interest to conserve and utilize the * * * waterpower resources of the region," it "might well determine * * * that if public lands are to be used for the transmission of power, conservation of the 'waterpower resources of the region' requires that public power as well as private power be transmitted over them." 344 U.S. at 22-23. The Supreme Court therefore upheld the Commission's requirement that a private power company seeking to construct a powerline over public lands would have to transmit some public power over that line.

I therefore conclude that you have the discretionary authority to require persons other than actual settlers residing within national forests to grant reciprocal rights to the United States for the privilege of using existing roads in national forests.

III

I now proceed to your authority relating to permits to build wagon roads across national forests. Since the right of actual settlers to build wagon roads across national forests is subject to your authority under 16 U.S.C. 551 to issue rules and regulations (see supra, pp. 11, 21), and since this authority generally includes the power to withhold a permit unless the applicant confers upon the United States a reciprocal benefit which bears a reasonable relation to the management of the national forests, it follows that this reciprocity requirement may be imposed

²⁶ Title V of the Independent Offices Appropriations Act, 1952, 65 Stat. 290, 5 U.S.C. 140, now expresses the general policy that Federal facilities should not be made available gratuitously to individual or corporate users. See in this connection also 16 U.S.C. 501.

on actual settlers who seek permits to construct wagon roads across national forests. However, the statute makes specific reference to the construction of wagon roads by actual settlers. In appropriate circumstances, this may require you to impose less burdensome conditions upon them than upon others and therefore to limit your exercise of administrative discretion to impose reciprocity requirements.

With respect to applications by persons who are not actual settlers to construct wagon roads across national forests, your regulatory authority is based on two sources, viz, 16 U.S.C. 478, 551, and 16 U.S.C. 525. A reciprocity requirement may be imposed under either of them.

In section 9 of the first regulations issued under the act of June 4, 1897, the Secretary of the Interior took the position that his authority, under what is now 16 U.S.C. 478 and 551, to issue rules and regulations relating to the entry of persons other than actual settlers upon national forests for all proper and lawful purposes included the power to authorize the construction of wagon roads by such persons (24 L.D. 589, 591). You, too, are basing your authority to construct roads across national forests on the act of June 4, 1897, in particular 16 U.S.C. 551 (36 C.F.R. pt. 251, Authority). I fully agree with these conclusions reached by the Departments of Agriculture and of the Interior. Having decided that you have the authority under 16 U.S.C. 478, 551 to require the grant of reciprocal rights from actual settlers who seek to build wagon roads across national forests and from persons who are not actual settlers who seek to use existing roads in national forests, it follows that the same rule applies to the issuance of permits, under that statutory authority, for the construction of wagon roads across national forests by persons who are not actual settlers.

An additional basis for your authority to impose this reciprocity requirement is provided by the act of March 3, 1899, 30 Stat. 1233, 16 U.S.C. 525, which was enacted 2 years after the issuance of the above-mentioned regulations of the Secretary of the Interior (*supra*, p. 28).

Title 16, United States Code, section 525 provides:

"In the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any national forest when in his judgment the public interests will not be injuriously affected thereby."

The enactment of this statute was prompted by the inability of the Secretary of the Interior under section 5 of the act of March 3, 1875, 18 Stat. 482, and similar legislation, to grant rights-of-way for railroads across national forests. Since this seriously interfered with the development of the West, and in particular the construction of railroads, Congress conferred upon the Secretary the power to grant such rights-of-way across national forests in those cases in which the public interest would not be adversely affected, rather than to require the passage of legislation in every such case.²⁷

Although the Secretary of the Interior originally took the position that he had the authority under the act of June 4, 1897, to permit the construction of wagon roads across national forests by persons who are not actual settlers (*supra*, p. 28), it appears that he now refers to the act of March 3, 1899, i.e., 16 U.S.C. 525, as the basis of his power to grant such permit.²⁸

The Supreme Court has held repeatedly that under 16 U.S.C. 525 the Secretary is "invested with a large measure of discretion to be exercised for the conservation of the public interest." *Chicago, Milwaukee & St. Paul Railway v. United States*, 244 U.S. 351, 358; *Van Dyke v. Arizona Eastern Railroad*, 248 U.S. 49, 53. The Court also pointed out that the right-of-way can be obtained only with the Secretary's approval. (*Ibid.*)

²⁷ The legislative history indicates that neither the Secretary nor anyone else raised doubts as to the Secretary's existing authority to permit the construction of wagon roads, as opposed to railroads, in national forests prior to the enactment of the act of Mar. 3, 1899 (16 U.S.C. 525). The reason for including a reference to wagon roads and highways in the statute is not clear. For the legislative background of the act see 32 Congressional Record 2800-2801, and the opinions of the district court, the court of appeals, and the Supreme Court in *United States v. Chicago, Mil. & St. P. Ry. Co. of Idaho*, 207 Fed. 165, 170-171 (D.C. Idaho), affirmed, 218 Fed. 288 at 291-294 (C.A. 9), affirmed, 244 U.S. 351 at 356-358.

²⁸ Cf. 43 C.F.R. 244.52.

Your authority under 16 U.S.C. 525²⁹ appears, if anything, somewhat broader than under 16 U.S.C. 478 and 551. In any event, the same considerations which authorized the imposition of the reciprocity requirement under 16 U.S.C. 351 would justify a conclusion that the public interest would be injuriously affected if you were gratuitously to grant a right-of-way to a corporation which is unwilling to give a reciprocal benefit to the United States.

It is therefore my conclusion that the legislation relating to the national forests authorizes you to impose a reciprocity requirement on requests to use existing roads by persons who are not actual settlers, and to build wagon roads within national forests whether made by actual settlers or by other persons.

IV

The circumstances that the United States has not claimed any reciprocal rights for the grant of temporary permits³⁰ during the 64 years the statute has been on the books does not estop it now from issuing regulations to that effect. The property rights of the United States cannot be lost by estoppel or the failure of the United States or its officials to claim them. *Light v. United States*, 220 U.S. 523-535; *Utah Power & Light Co. v. United States*, 243 U.S. 389, 408-409; *United States v. City & County of San Francisco*, 310 U.S. 16, 31-32; *United States v. California*, 332 U.S. 19, 39-40; *St. Regis Paper Co. v. United States*, 368 U.S. 208, 218. Moreover, it appears from your General Counsel's letter of October 18, 1961, that this problem is of relatively recent origin; hence, the estoppel period would not date back to 1897, when the statute was enacted, but to a much more recent time, apparently at the earliest in the 1940's, when private landowners first became reluctant to give to the United States reciprocal rights-of-way voluntarily. Compare *United States v. California*, 332 U.S. 19, 39.

It may, in addition, be contended that the conclusion herein is inconsistent with the doctrine of executive construction as formulated in *Norwegian Nitrogen Co. v. United States*, 288 U.S. 294, 315. So far as I can determine from the material submitted to me, the general public has as a matter of policy been permitted to use existing roads and trails in national forests since the statute was enacted without reference to the status of any individual as an actual settler, resident within the reserve or nonresident.³¹ This does not, however, appear to represent an interpretation that the policy is legally required. Nor does this policy bar the United States from imposing conditions on such long-established use should new conditions require it. Compare *Light v. United States*, supra, at 535.

So far as the construction of roads in national forests is concerned, I believe the doctrine of the *Norwegian Nitrogen Co.* case to be wholly inapplicable. The present administrative practice, evidenced by 36 CFR 251.5 (c) and (d), distinguishes between owners of property within the boundaries of national forests and nonowners and indicates that the former group has a statutory right of egress and ingress which entitles it to construct roads across national forest lands, while nonowners require a permit for the building of such roads. However, this practice and the underlying interpretation of the statute go back only to the amendment of the regulations in 1953, or possibly to 1950 (see supra, pp. 4-7). The information which you have supplied relating to the practice of the Department of Interior from the time immediately after the passage of the act of June 4, 1897, until 1905 is not completely clear.³² However, as soon as the Department of Agriculture undertook the administration of the national forests in 1905, it specifically required every private person—as distinguished from State and county authorities—whether actual settler, mere owner, or nonowner, seeking to construct a wagon road across national forest lands to obtain a permit and maintain this requirement until 1953.³³

²⁹ The broad power under 16 U.S.C. 525 to grant permanent rights-of-way, of course, includes the lesser authority to grant temporary permits which do not affect the fee. The latter authority passed to the Secretary of Agriculture under the act of Feb. 1, 1905, 33 Stat. 628, 16 U.S.C. 472, and the implementing agreement of the Secretaries of Agriculture and of the Interior, cf. supra, p. 4. See also 16 U.S.C. 525, Cross References.

³⁰ The Department of the Interior has imposed the reciprocity requirement for the past 12 years where interests of a more permanent nature were involved, see supra, p. 4.

³¹ A few minor exceptions have been made to give preference to actual settlers or residents. See "Trepass Regulations," 36 C.F.R. 261.2(l)(m); 261.4(h); 261.11(f).

³² Cf. letter of your General Counsel dated Sept. 27, 1961, appendix, pp. 8-9, 23.

³³ Id., pp. 9-13, and regulations issued Sept. 10, 1945, 10 F.R. 11672.

In the light of this history, I cannot conclude that there exists "a consistent and generally unchallenged"³⁴ administrative practice which assimilates the "mere owner" to an "actual settler," and the right of egress and ingress to the right to construct wagon roads.

V

In arriving at the conclusions expressed in this opinion, I have had available to me not merely the views of your General Counsel, but also those of lumbering interests which might be affected by any change in policy. I have found these most helpful in my consideration of the issues presented to me. I am, however, impressed by the extent to which the statute tends to be viewed in absolute terms not borne out by either its language or legislative history. There is a tendency to claim on the one hand an almost unqualified statutory right of any owner of property located within the boundaries of national forests to build roads across the forest reserve, the narrow language of the statute and to argue that, if this were not the case, owners would be without any rights whatsoever; that is, that you could arbitrarily deny access or condition it on unreasonable requirements. As I have emphasized, I do not understand this to be the law.

The language of the act, and its legislative history indicate a congressional desire to permit actual settlers and others who own property within the boundaries of national forests to obtain access to, and use, their property, subject to the purposes to be attained by the statute; i.e., generally, the regulation of the occupancy and use of the reservations and the preservation of the forests thereon from destruction. As the Supreme Court pointed out in *United States v. Grimaud*, 220 U.S., 506, 516-517, it is your function to determine what private use of the national forests in any given case is consistent with the purposes sought to be attained by the statute.³⁵ The imposition of harsh and onerous requirements not related to the benefit received or to your general responsibility to preserve and manage the national forests, might well constitute an abuse of discretion.

The essence of the second question presented to me is not whether you have a mandatory duty to impose a reciprocity requirement on applicants who seek to cross national forests or to construct wagon roads therein, but whether you possess any discretionary authority to do so. My conclusion that you generally possess this discretionary authority, of course, does not preclude the possibility that in the circumstances of particular cases, which are not before me, the area of your authority may be significantly narrowed by such circumstances. In any event, the question whether you should exercise whatever authority you possess is a matter for you to determine. Problems of both policy and law may affect your exercise of discretion.

The memorandums submitted by the lumber companies take the position that where a person who owns property within the boundaries of a national forest asks for the right to cross that forest or to construct a road in it to reach his property, he is actually asserting an easement by necessity, and consequently entitled to the permit as a matter of private property right. The question whether an easement by necessity lies against the Government is extremely complex and controversial;³⁶ however, it need not be decided here. It is my view that these easements do not exist over public lands. Moreover, if Government land could be servient property, it also would be dominant property where the situation is reversed, and you could, in the exercise of your discretion, refuse to respect an applicant's easement as long as he failed to honor his reciprocal obligation to the United States.

It is also apparent that the administration of a policy requiring reciprocity may be complicated where a private person seeks permission to build a relatively short wagon road over Government lands, and the Government seeks to build a much longer one over his property, or to use his extensive network of roads, or

³⁴ *Norwegian Nitrogen Co. v. United States*, *supra*, at 315.

³⁵ *Light v. United States*, 220 U.S. 523, 536, indicates that the act of June 4, 1897, does not constitute the full exercise of the power Congress has under art. IV, sec. 3, of the Constitution to prohibit absolutely the use of national forests by private persons.

³⁶ See *Bydell v. United States*, 175 F. Supp. 891, 898; Rombauer, "Easements by Way of Necessity Across Federal Lands," 35 Washington Law Review 105; cf. *United States v. Findings*, 208 Fed. 611-619 (S.D. Cal.); *Pearse v. Coal Creek Min. & Manufg. Co.*, 90 Tenn. 619, 18 S.W. 402; *State v. Black Bros.*, 116 Tex. 618, 625-629, 297 S.W. 213, 217-218; *Gness v. Azar*, 57 So. 2d 443 (Fla.); *Wilcoxon v. McGhee*, 12 Ill. 381, 385-386; Jones, "Easements," sec. 298, 301; Simonton, "Ways by Necessity," 25 Columbia Law Rev. 571, 575.

to exercise rights which are in other respects substantially greater than what it gives.

Similar problems of possible unfairness and lack of equality may arise from the circumstance that, although you require the grant to the United States of at least long-term easement, you can issue only a temporary permit. It may, therefore, be desirable to devise some administrative machinery pursuant to which an application to your Department for the construction of a road across national forest lands can be referred by you to the Department of the Interior for the grant of an easement without requiring the filing of multiple applications. While I believe such a machinery can be established under 16 U.S.C. 525 and 472, whether you should attempt to do so is again a matter confided to your discretion.

Sincerely,

_____,
Attorney General.

Mr. ORELL. Mr. Chairman, it had been my intention to ask permission to put in the record all these documents that we refer to as a part of the record, because they certainly are appropriate and would be excellent background for both yourselves and the staff.

Senator RANDOLPH. Off the record.

(Discussion off the record.)

Mr. ORELL. There is one more regulation to which I would like to refer, however, and that is the proposed—I shouldn't say "proposed," they are promulgated as of yesterday—Forest Service road regulations which were first sent out for public perusal at the end of 1962. These regulations merely increased the uncertainty that was involved, and if I may review the situation now as it has developed, including the road right-of-way regulations, prior to the Attorney General's opinion, the forest industries considered, as did their attorneys, that we had a statutory right, an absolute statutory right, to reach private lands within the boundaries of the national forests. With the Attorney General's opinion, the private owner no longer had this statutory or absolute right to reach his lands, and the opinion allowed conditioning an exchange of grants of easements or grants of access on substantially similar values, or else suggested that adequate compensation should be made.

Under the regulations, however, as they are promulgated and as we read them, the Forest Service could require a right-of-way of any value—instead of substantially similar value—which would be determined by the Forest Service, so you see here a progressive deterioration of the position of the industry, as far as permanent access to its lands is concerned.

Now, I think there is a significant statement with regard to this. It relates, however, the first draft of the regulations and was by a Forest Service officer in the West. He says: "The earlier draft [of the regulations] enabled the Forest Service to take a private road against the owner's will and to make a unilateral determination of value."

Now, since that time the Forest Service says they have softened the requirements, as expressed by this individual, as related to the first draft of these regulations. We do not believe that there is sufficient protection in this matter of compensation or like value on an exchange of access grants.

Now, there are other inequities which come out very specifically in my presentation which in the interests of time I will not go through in detail, but the conclusion that one has to come to with regard to the

series of interpretations and rulings is simply that regulations have caused a deterioration of the position of the industry to a point where such a substantial investment in the road systems as I described to you in the pictures, could not be made with the security that future regulations would not again take away or diminish the value of that investment over a period of time. And also we would not have the security to make investments in timber growing. Trees planted today will take 80 or 120 years to grow in some parts of the western pine region. We cannot make these investments and continue management without more security of access.

Senator RANDOLPH. Would you attribute this partially to a breakdown of communications between the Federal Government and the private timber owner?

Mr. ORELL. No, sir; I would not. In actuality, before the Attorney General's opinion, the industry had been meeting for more than 21½ years with officials of the Forest Service. We had reached substantial agreement with regard to many of the details of road right-of-way situations which the Forest Service needed and which we needed, and this was upset entirely and completely by the Attorney General's opinion.

I would also like to point out that many of the provisions in S. 1147 are provisions that came out of those discussions between the industry and the Forest Service.

With regard to specific consideration of S. 1147, I will refer to some wordage, without reading it, which is on specific pages in the presentation you have before you. We will review the substance of these provisions and then suggest additions which are necessary to protect the users of the national forests and we think to protect the national forests themselves.

Section 2, as Mr. Florence has said, is for the purpose of assisting access to the national forests. The stumbling block in the past, as I have illustrated, has been the fact that the Forest Service cannot grant permanent easements to private timber growers.

The Forest Service has enumerated to you certain principles for management of the national forests. One of these is that, in many instances, they must have access for multiple-purpose use. The second is that they must have permanent easements for sustained yield; and the third is that the easements to the United States must be non-restrictive so that they can have the complete and absolute control of access to their lands in terms of sustained yield management.

These principles are reiterated because these are the same principles that are absolutely essential to a private owner managing commercial forest land for successive timber harvests over a period of years or a rotation or for successive rotations.

The additions that we would suggest to section 2, the intent of which we agree, would be to provide clearly in the law the Attorney General's opinion in which he refers to this matter of equal value. In other words, we want the conditions of access granted by the private owner related to the value and to be clearly stated in law. The second would be to limit these valuations to fair market value, so as to avoid any possibility of an unreasonable demand by the Government.

The example that I would give in this instance is that if a private owner needed a bare land right-of-way of a few hundred yards, the Forest Service under the additions that we have added, would not be

able to condition his access on a requirement of several miles of bare land right-of-way from the private owner, in another part of the area or another part of the national forest. And so we would add the language on page 18 at the end of section 2. This would simply mean, to restate it, that the Forest Service would be able to acquire greater rights or values by negotiation or condemnation but not by denial of access to the private owner.

One of the important things about access on national forests, as well as private lands, and this is similar in both instances whether it be State, Federal, or private land is the matter of prompt access. Prior to the Forest Service interpretation of the Attorney General's opinion, all we had to do was file a simple document on where and how we intended to put our road system in and obtain a determination that the interests of the Federal Government would not be bothered. We have no similar situation at the present. And so we would add language on page 19 which, in effect, would assure prompt access to the industry while at the same time allowing for full compensation if the Forest Service demanded access of greater value in return for this access. In other words, we feel very strongly that this wordage is important. We must have a situation where we can be assured of prompt access which we do not now have.

Under Opinion 88, concerning this matter of full compensation and its relationship to the reservation of free use, the addition would also prevent the Governments' use of a private investment without compensation. Forest Service officials have indicated to us that they would like to be able to make such payments. To reinforce this point we would then add the wordage at the top of page 21.

Again going to the map, I would like to give you an example of a particular situation which stresses the case in point.

In this area on this part of the map going clear back into range 11 east is what is known as the Seattle City of Cedar River watershed. The areas colored in blue are city lands, the areas in buff or yellow are Forest Service land, pink is State land, and these in green are private lands with an occasional spot of white lands, which are other private.

The Scott Paper Co., and the Weyerhaeuser Co., in developing this watershed area, which is managed by the city of Seattle as a producing tree farm, developed a road system of a little bit more than 98 miles. The Forest Service and the two companies agreed that the value in round figures was \$1,200,000. Of this 98 miles, approximately 19 miles were built across national forest lands on which, and again there was general agreement, the 19 miles was valued at a little bit less than \$300,000.

The result of the negotiations was that the Forest Service felt they could not recognize a compensable value in the 19 miles on national forest lands and eventually they did take perpetual rights on the entire road system without recognition of a compensable value in the 19 miles of high standard logging roads.

Another case in point which actually was determined by the courts was that of the Pope & Talbot Co., in Oregon. They built a high standard road to get to their own timberlands within the boundaries of the national forest. It was flooded by the Hill Creek Dam built by the Corps of Engineers. The court held there was no compensable

interest in the part of the road on national forest lands because the company did not in fact have a sufficiently good title to the right-of-way on which the road was built, and therefore the compensable interest was not recognizable.

So you can see, then, that this matter of compensation for an interest, of a very substantial interest, is involved in the necessity for rights-of-way and road easements over national forest land. The industry incidentally believes that neither the industry nor the Forest Service should be the agency which determines the values which are involved, and we suggest that they use the district courts much in the same manner as these district courts rule on condemnation proceedings.

(The court case referred to is as follows:)

UNITED STATES OF AMERICA, APPELLANT,

v.

POPE & TALBOT, INC., A CORPORATION, APPELLEE

No. 16801

United States Court of Appeals, Ninth Circuit

June 14, 1961

Rehearing Denied August 2, 1961

Eminent domain case. The United States District Court for the District of Oregon, William G. East, Jr., rendered a judgment for the condemnee, and the condemnor appealed. The Court of Appeals, Merrill, Circuit Judge, held that the condemnee was not entitled to severance damage for increased fire hazard on theory that lake which had been created by dam project and would cover condemned land, would attract people who would bring fire.

Affirmed on condition of remittitur.

1. Eminent Domain ⇨106

Loss in market value of remainder of condemnee's land, due to fact that lake created by dam reduced accessibility of such remainder land, was compensable, under circumstances.

2. Eminent Domain ⇨109

Condemnee was not entitled to severance damages due to increased fire hazard on theory that lake, which was created by dam project and would cover condemned land, would attract people who would bring fire.

3. Eminent Domain ⇨263

Condemnee was entitled to remittitur as alternative to reversal and full new trial where highest figure placed by condemnee's witnesses on erroneously allowed element of damage was \$14,300, although verdict did not segregate various elements of damage.

Perry W. Morton, Asst. Atty. Gen. Roger P. Marquis, A. Donald Mileur, Attys., Dept. of Justice, Washington, D.C., Clarence E. Luckey, U.S. Atty., Portland, Oreg., for appellant.

Mautz, Souther, Spaulding, Kinsey & Williamson and John L. Schwabe and James B. O'Hanlon, Portland, Oreg., and John E. Jaqua, Eugene, Oreg., for appellee.

Before JERTBERG, MERRILL, and KOELSCH, Circuit Judges.

MERRILL, Circuit Judge.

The United States appeals from an award of compensation for lands of Pope & Talbot, Inc., taken in eminent domain. It contends that in two respects the jury improperly was invited to take into consideration elements of severance damage as to which Pope & Talbot was not entitled to compensation.

The proceeding is for the condemnation of 1,454.10 acres of timberland located in Lane County, Oregon, for use in connection with the construction and operation of the Hills Creek Dam Project on the middle fork of the Willamette River, a federal navigation and flood control project. The land consisted of fifteen different tracts located upon both sides of the river and interspersed in checkerboard fashion with federal forest service lands. The taking occurred May 31, 1957.

Appellee, in 1946, acquired 31,254 acres in this area which at that time was a completely undeveloped forest area. Appellee entered upon a long range program to utilize its timber acquisitions. Sawmills, wood products plants, housing facilities and machine shops were built at the entrance to the basin. A road system was laid out with the cooperation of the government to serve the needs of both. It was agreed that the appellee would construct the road, with the cost to be shared in ratio to the ownership of timber within the basin: 71% by the government and 29% by the appellee. Appellee granted an easement to the government for that portion of the road which passed over its lands and the government issued a revocable use permit to appellee covering that portion of the road passing over government lands. The floor of the valley is flat, but the terrain paralleling it is steep, rugged, mountainous country. The main road through the basin, as constructed by appellee, ran along the floor of the valley near the river. The Hills Dam Project flooded the lands of appellee appropriated by the government, including the roadway.

The dam itself was located about a mile upstream from appellee's plant. It is over three hundred feet high and backs up a lake approximately forty miles in circumference which forms a large artificial barrier squarely in the midst of appellee's operations. New roads of necessity took to the side hills and circled the lake.

The judgment of the district court, pursuant to jury verdict, awarded compensation in the sum of \$595,000.00. In the district court the United States had contended that appellee's operations in this basin did not constitute a unitary and integrated use. The jury found against the United States on this contention¹ and the point is not now pressed.

The principal issue upon appeal relates to appellee's right to compensation for injury resulting from the flooding of the original road.

Appellee in the district court contended that it owned a property interest in the road and was entitled to compensation for the taking of that interest. The district court ruled against appellee in this respect. The jury was told:

"The Court has ruled that the defendant was using the access as it existed at the time of the taking as a permittee only. And that the defendant's use thereof was subject to the paramount right of the government to deny anyone further use. Therefore, [it was] without a duty to pay compensation for any loss or damage which might result to the defendant by reason of the closure of the route and cancellation of the permit."

The court did, however, recognize that appellee was entitled to compensation for severance damage to its remaining lands caused by loss in market value by virtue of reduced accessibility due to the barrier which the lake formed. The jury was so instructed. The government assigns as error the giving of this instruction and the introduction of evidence as to the extent of damage due to reduced accessibility.

Upon this appeal the government reverts to its contention that appellee is not entitled to compensation for the taking of any interest in the flooded road. In the light of the district court ruling on this point, we find no issue with respect to it.

The question, as we view it, is whether appellee is entitled to severance damage for loss in market value of its remaining lands due to the use to which the government has put the land taken.

In *United States v. Grizzard*, 1910, 219 U.S. 180, 31 S.Ct. 162, 55 L.Ed. 165, it was held that compensation for a taking in eminent domain must include not only the market value of the part appropriated but also the damage to the remainder resulting from such taking, embracing injury due to the use to which

¹The jury verdict returned in the form required by the court was as follows:

"1. Do you find that the defendant's operation in the middle fork drainage constituted a unitary and integrated use on May 31, 1957? Answer: Yes.

"2. What amount do you fix as just compensation for the defendant in this case? Answer: \$595,000.00."

the part appropriated is to be put. The court stated at page 184 of 219 U.S. at page 164 of 31 S.Ct.:

"If, as the court below found, the flooding and taking of a part of the plaintiffs' farm has depreciated the usefulness and value of the remainder, the owner is not justly compensated by paying for only that actually appropriated, and leaving him uncompensated for the depreciation over benefits to that which remains." Further, at page 185 of 219 U.S., at page 164 of 31 S.Ct., the court stated:

"To say that such an owner would be compensated by paying him only for the narrow strip actually appropriated, and leaving out of consideration the depreciation to the remaining land by the manner in which the part was taken, and the use to which it was put, would be a travesty upon justice."

In *Campbell v. United States*, 1924, 266 U.S. 368, 45 S.Ct. 115, 69 L.Ed. 328, light was cast on the Grizzard rule. In that case the United States had taken 1.81 acres of land to be part of the site for a nitrates plant. The entire tract, including lands acquired from others, comprised 1,300 acres. After placing on the tract substantial improvements incidental to industrial use, the government project was abandoned and the property put up for sale. The trial court allowed as separate items of damages the value of the area taken, the damages to the remainder resulting from the taking and the damage to the remainder resulting from the uses to be made of the lands acquired from others. The last item of damages was based chiefly upon the probability that the tract, improved as it had been by the United States, would be sold and used for industrial purposes. The Supreme Court rejected this last item of damages. It ruled at page 372 of 266 U.S., at page 117 of 45 S.Ct.:

"We think that plaintiff's contention is not sustained. The rule supported by better reason and the weight of authority is that the just compensation assured by the Fifth Amendment to an owner, a part of whose land is taken for public use, does not include the diminution in value of the remainder caused by the acquisition and use of adjoining lands of others for the same undertaking."

In reaching this conclusion, the court stated at page 371 of 266 U.S., at page 116 of 45 S. Ct.:

"The land taken from the plaintiff was not shown to be indispensable to the construction of the nitrate plant or to the proposed use of the other lands acquired by the United States. The damages resulting to the remainder from the taking of a part were separable from those caused by the use to be made of the lands acquired from others. The proposed use of the lands taken from others did not constitute a taking of his property. *Richards v. Washington Terminal Co.*, 233 U.S. 546, 554 [34 S. Ct. 654, 58 L. Ed. 1088, L.R.A. 1915A 887]. Plaintiff had no right to prevent the taking and use of the lands of others * * *."

West Virginia Pulp & Paper Company v. United States, 4 Cir., 1952, 200 F. 2d 100, was a case in which land was taken to provide a site for the storage of gasoline by the air force. The land taken was 44 acres out of a tract of 413 acres held by the owner for plant expansion. Appellant sought to show that the proposed use of the land taken depreciated the value of the remainder of its tract. The evidence was excluded and the court of appeals reversed. *Campbell* was distinguished, the court stating at page 103:

"In this case, however, the claim for damages arises not from the use of land acquired from others but from damage done to the remainder of a unitary holding from the use made of the part thereof that has been taken."

[1] The case before us would seem to fall between *Campbell* and *West Virginia Pulp and Paper Company*. Here the damaging use embraces the property taken and also adjoining property of the United States. The reasoning of the court in *Campbell*, however, convinces us that *West Virginia Pulp and Paper Company* should control. With reference to circumstances regarded as significant in *Campbell*, we note that here the land taken was indispensable to the dam project; that damages resulting to the remainder from the use of the land taken are inseparable from damages resulting to the remainder from the use of government land. Further, we note and regard as significant the fact that the land taken did not form an inconsequential part of the tract ultimately put to the damaging use. It was not only indispensable; its contribution to the project and to the damage produced by the project was substantial.

We conclude that under the facts of this case the loss in market value of the remainder (due to the fact that the lake created a condition reducing the accessibility of those lands) was rationally attributable to the use to which the taken lands were put; that appellee was entitled to compensation for such

damage; that neither the receiving of evidence nor the instructions to the jury upon this point constituted error.

[2] The United States contends that the district court erred in permitting the jury to assess severance damage to the remainder of appellee's lands due to increased fire hazard resulting from increased recreational use of the area. Evidence was introduced over objection as to depreciation in value due to this hazard. The jury was told:

"If you should find from a preponderance of all of the evidence in the case that by reason of the taking of defendant's property by the government that the risk of fire has been increased, then you are instructed that you may take such consideration into account in determining defendant's damage or depreciation, if any, to its remaining lands in the minds of a reasonable intending purchaser."

This we are convinced was error.

No fire hazard can be found from the flooding of the lands taken from appellee. The district court apparently proceeded upon the indisputable thesis that the lake would attract people and that people bring fire. But it is not the government's use of the lands taken from appellee which has created this hazard. It is the use which, it is anticipated, the government will make of its own unused forest lands abutting the lake which has caused this element of depreciation.

We can sympathize with appellee in its resentment against public intrusion upon the solitude which it has heretofore enjoyed. It has, however, no right to insist that the United States so use its forest lands as to protect appellee against such intrusion. Nor can it complain that the use made of the lands taken from it has increased the attractiveness of the government's forest lands. For this element of depreciation there can, under Campbell, be no recovery.

[3] The jury verdict did not segregate the various elements of damage and we have no way of knowing to what if to any extent fire hazard was reflected in its award.

However, the highest figure placed on this element of depreciation by appellee's witnesses was \$14,300.00, and the maximum effect of the error is thus established by the record. The case then is an appropriate one in which to grant appellee the right to remittitur as an alternative to reversal and full new trial.

It is ordered:

(1) that if appellee within fifteen days remits to the clerk of the district court the sum of \$14,300.00 of the judgment awarded by that court and certifies to the clerk of this court that such remittitur has been made, judgment in such reduced sum of \$580,700.00 shall be affirmed;

(2) that if appellee does not make such remittitur, judgment shall be reversed and this cause remanded for new trial.

Senator JORDAN. Would you have appraisers go in and appraise the value that the court set up? Is that what you mean by that?

Mr. ORELL. Yes, Senator. Actually, we think if there was a third party determination, that there would be relatively few court cases, simply because this would be an added incentive for the two parties involved in a particular negotiation to get together.

Now, as far as section 3 is concerned, this is a housekeeping provision and we approve of the section as it stands.

Section 4, on which Mr. Craig will speak briefly but in a little more detail, in essence would permit road financing by a number of different methods. Roads built by timber purchasers under the "prudent operator" rule which Mr. Florence referred to, at the present time prevents the Forest Service from trading timber for roads in excess of the need of, or not connected with the specific timber sale. The bill as written will allow timber to be traded for roads needed in the future provided it will be used for timber. In other words, as this section is presently written, it would be possible to require a timber purchaser-road builder on a particular timber sale to build a road that would be adequate for all of the tributary timber that might come out of that drainage at some future date. The wording we sug-

gest, which would be at the top of page 27, will not prevent using timber to finance roads for future use, but it will prevent discrimination against purchasers who are unable to go into extensive roadbuilding programs which are greater than needed for the sales they can purchase. And this wording we feel would cover that very adequately and as I mentioned, Mr. Craig will have more to say on that.

With regard to section 5, this is satisfactory to us.

Section 6—the objective here is to give the Forest Service authority to require the sharing of maintenance costs, and we agree but we feel it needs clarification and we would depend on the committee to do that before it reports out the bill. A problem here is in regard to reconstruction costs. We think that there is a possibility that under the present wording of the bill, timber or wood products might be required to pay for road costs which are properly chargeable to other multiple uses.

Senator JORDAN. You said about the sharing of the maintenance, in arriving at a fair proportion, the committee might arrive at their fair distribution? Would you have some recommendation as to what would be fair?

Mr. ORELL. I am not sure, Senator, that the specifics of this element have been worked out as yet. I think the basic principle, however, does apply, that if the road is used for multiple-use purposes, that the wood products manufacturer or the timber landowner should not pay for construction or maintenance of a road to a standard that is necessary for public use, for recreational use, and for all the timber that comes down that road. In other words, we agree with the idea that amortization of the road or the authority to require a sharing of maintenance costs from all timber haulers, which is the basic essence of this section, is fair and equitable, but we don't think that timber haulers either singly or in tota should be required to pay for maintenance that is required to make the road safe for recreationists as well.

We agree that, as to most of these roads, the recreationists should use them but we think that the costs should not be borne only by the timber.

Senator JORDAN. Thank you.

Mr. ORELL. In regard to section 7, on the matter of allowing purchasers to deposit funds, from which the Forest Service can buy roads or easements, we have no particular quarrel, although here again we would like a little clarification.

This, Mr. Chairman, is my not too brief presentation I am sorry to say, but this gives you a general view of the attitude of the industry, the history of the matter of road rights-of-way negotiations, and some of the events that have brought us to this point.

I would like to say, and I speak of this from a very personal standpoint based on my experience in public forestry work, that in actuality, if these regulations are put into effect and enforced as they are presently written without the qualifying amendments and the authority that would be granted in this legislation with the additions we have recommended, there will be a resulting controversy that will be much greater than it has been in the past. We have had rather close agreement in the past—with what has been needed for the development of access systems to reach national forest lands as well

as private lands. There have been differences between buyer and seller which are natural in the negotiations on roads. Yet it is my feeling that, as I said at the outset, the Forest Service is looking to the interests of the national forests only. We depend on you as a committee and on Congress to balance this so that the interests of the private owners are protected. They are contributing a great deal to the national flow of raw materials to the plants and mills of this country in the wood products industry. We feel rather strongly that the multiple-use factors related to private forest lands are inherently a part of the management of that forest land and these multiple-use factors need protection to the private owner as well as to the Federal or State government.

Thank you very much, Mr. Chairman, for your patience with me in making this presentation.

Senator JORDAN. Thank you, Mr. Orell.

Senator JORDAN. Senator Metcalf, do you have some questions?

Senator METCALF. No. I am going to defer my questions at this time.

Mr. Chairman, I can see that here is a matter that is going to take considerable study on the part of this committee because I want to complement you on a very thorough statement and I appreciate your coming in with specific proposals as to language. I am going to ask that the staff, Mr. Chairman, present this language to both the Forest Service and the Department of Justice, that provision for the district courts review, and get comments from them so that we can study the Forest Service suggestions as to amendments that you are proposing. Otherwise I have no questions, Mr. Chairman.

Senator RANDOLPH. Thank you, Senator Metcalf.

I think we would want to do that. I believe Mr. Orell would want us to make an objective approach, and although he is a party at issue and those who join with him, I would want to bring into focus some of these points presented in his constructive testimony in the hope of gaining further balance among all the interests involved. I mean as to counseling with the—

Mr. ORELL. If I may comment on that, we feel very happy to have this legislative issue before the Public Works Committee because we realize your long experience in this area of public roads and the easements and access problems that go with those.

Senator RANDOLPH. Thank you, Mr. Orell.

Senator Metcalf?

Senator METCALF. Mr. Chairman, it occurs to me that perhaps Mr. Orell or some of his colleagues might want to have further comments on these, both the letter of June 10 and the recent regulations that have been promulgated, because I have not had an opportunity to read them. Maybe they haven't had. That would be helpful, too.

Senator RANDOLPH. Of course, we will keep the record open for that purpose, Mr. Orell.

(The comments referred to are as follows:)

PORTLAND, OREG., July 25, 1963.

HON. JENNINGS RANDOLPH,
Chairman, Subcommittee on Public Roads,
Senate Office Building, Washington, D.C.

DEAR SENATOR RANDOLPH: In accordance with the request of the committee made at the June 11 hearing, for comments from the forest products industry on Forest Service access regulations (36 C.F.R. 212.7, et seq.). I am pleased to

furnish the following summary of the points which were made by numerous industry spokesmen in the 9 months preceding promulgation of the regulations.

Our first basic criticism of the regulations is that they fail to include definite standards governing the exercise of administrative discretion and defining the nature of rights which the Forest Service will obtain over private lands. Our second basic criticism is that the regulations fail to provide the reciprocity necessary to encourage needed exchanges of rights-of-way between the Forest Service and private landowners. The specifics which support these general conclusions follow:

1. Permanent easements are required in return for revocable permits

Regulation 212.11(g) makes it clear that the Forest Service will require from private landowners easements which are permanent. Such easements furthermore are assignable by the United States to any person and for any purpose.

Grants to be made by the Forest Service will, however, be either in the form of a special use permit which is expressly terminable by the Forest Service; or in the form of a Department of Interior grant "in the nature of an easement," issued under authorization of the act of March 3, 1899, 16 U.S.C. 525. Special use permits thus give no assurance of rights of continued access; they are not appurtenant to the lands served, and are subject to future regulations of the Department of Agriculture. Industry's criticisms of the form of grant which the regulations contemplate will be made by the Department of Interior and which have actually been offered in the course of a number of negotiations in the past year are as follows:

(a) The basic act relied upon for issuance of these grants by its very language and its legislative history does not support the claim that it is authority for issuance of permanent easements. Any "rights" purportedly issued under this authority are particularly vulnerable to subsequent revocation or diminution by an administrative reinterpretation of the act itself.

(b) The form in which it is intended that such grants will be made is subject to future changes in administrative regulations of both the Departments of Agriculture and Interior. Nothing in the form restricts the changes which may be made by regulation. Thus, when one takes a grant "subject to applicable regulations," he risks having regulations adopted which could abrogate the very rights received at the time the conveyance was made. By accepting the grant subject to such regulation, the grantee agrees in advance to any change in regulations which abrogates the rights he had originally thought he was receiving.

(c) Such grants are not appurtenant to the lands served, and may not be assigned without the consent of the granting authorities. Neither the regulations nor the form of grant say anything about any precedent conditions which will have to be complied with by an assignee in order to obtain approval.

(d) Such grants may not be made across the nearly 20 million acres of Weeks law lands, or other national forest land acquired by exchange or otherwise.

(e) The procedure for making such grants by the Secretary of the Interior on behalf of the Secretary of Agriculture is unduly cumbersome.

Enactment of section 2 of S. 1147 will obviate all of the above enumerated difficulties with respect to the forms in which rights-of-way are to be issued across national forest lands pursuant to the present regulations.

2. A roadbuilder is not permitted to recover investments made under special use permits

In granting permits across national forest lands, the Forest Service has in the past and presumably in the future will reserve to itself, its permittees and the general public, the right to use without charge whatever roads may be built by the private permit holder on national forest lands. (See par. 212.10(a) of the regulations.) On the other hand, the Forest Service now refuses to permit, and presumably will continue to refuse to permit, a private landowner to reserve in a grant to the Forest Service across his lands a right to use without charge the road subsequently constructed on private lands. This lack of reciprocity stems from Opinion 88 dated April 18, 1960, of the Office of the General Counsel, Department of Agriculture. Under the regulations, however, an investment in a road constructed on national forest lands may be recovered if the Forest Service, before the investment is made, receives rights across private lands, in return for which it agrees to include such a provision in the grant or permit. The exigencies of the negotiating process under those conditions will

mean that the Forest Service can pretty much dictate the terms under which it receives the right-of-way across private lands. Even though the Forest Service may make heavy use of such a road, it makes the decision whether to include such a provision and it establishes the amount which ultimately can be recovered by the private owner. An appropriately worded addition to S. 1147 has been suggested to alleviate this particularly unjust arrangement.

3. There is no provision for reciprocity with respect to control of road use

The regulations make it plain that the Forest Service seeks to exercise control over roads across private lands which afford access to national forest lands, 212.9(h), 212.10 (c) and (g). However, the Forest Service does not undertake to compensate a private road owner when it insists on exercising such control of a private road as a condition of granting access across national forest lands.

Section 212.9(h) does say that the private party may include approved reservations in grants to the Forest Service. Obviously, the grantor must be permitted to reserve certain reservations for use. If not, the Forest Service is taking fee ownership and would have to compensate accordingly. Reading the regulations in their entirety, however, it is quite clear that reservations will not be approved which vest any control of other users in the grantor. (Nor in fact do the regulations give any enlightenment as to the extent of use rights which can be reserved.)

A landowner needs a voice in control of roads to limit his risks and exposure from: (1) subjection to extra fire risk created by users of the road; (2) damage to the roads themselves when used under adverse weather conditions; (3) hazards arising out of traffic conditions; (4) exposure of property to theft and vandalism by road users, and (5) elimination of cost savings made possible by private ownership of roads.

Alternatives to vesting control of the road in one party alone, with corresponding adequate compensation paid by that party, are: (1) to establish dual control with each party exercising control on the segments of the road owned by it, or (2) to work out by initial agreement the rules for road control. A combination of these arrangements is presently employed under BLM O. & C. right-of-way regulations. Either system also works well in practice between two private parties even when the road owned by both is subject to use by the public.

The regulations should provide that the Forest Service acquire easements limited to serving its foreseeably predominant access needs. Many areas in the national forests have only single use potential, and grants of access for unlimited uses in these cases are not needed. Certainly, grants broad enough to permit use by every other public agency or to transfer use to private parties are not always needed. In those instances, where the Forest Service deems it necessary to acquire an assignable easement, 'unlimited as to use (including the right of control), adequate compensation for the full right of control should be proposed. However, the regulations propose compensation primarily on the basis of tributary timber. If, for example, the Forest Service has 20 percent of the timber and the private owner has 80 percent of the timber, the regulations propose that the Forest Service pay 20 percent of the value to acquire an assignable easement which vests 100 percent control in the Forest Service. The regulations should recognize that control has a substantial value. The value paid should be in proportion to the interest acquired. Where full payment is not proposed, control should be shared. The absence of clear standards on this point is a deterrent to voluntary cooperative road use agreements.

Industry has made no legislative proposals for limiting the exercise of administrative discretion in this area of control over use of jointly shared roads. Many of these problems have begun to appear only since enactment of the multiple-use forestry law in 1960. It is therefore hoped that continued discussions and additional experience on these matters will lead to solutions.

4. Permanent access is not provided where needed

Paragraph 212.11(g) indicates that the Forest Service will usually insist on acquiring a permanent easement for access to its lands. However, 212.10(a) provides for furnishing only a revocable permit to the private landowner who is not required in turn to make a grant to the Forest Service. Yet, permanent access rights are as necessary for sustained yield management of private lands as they are for national forest lands.

In addition, several million acres of national forest land have been acquired through purchases under the Week law or by exchange and other means. Not even the questionable grants from Interior can be obtained across these lands.

Enactment of the broad, easement granting authority contained in S. 1147 will be sufficient authority for overcoming both these points. It will remain a question, however, whether the Forest Service, through the Secretary of Agriculture, will ever issue permanent easements to a private landowner who reasonably needs such easements, but who is not requested by the Forest Service to furnish it with similar rights. The Forest Service, however, can always acquire permanent rights in private land by condemnation, whereas the private landowner has no comparable alternative.

5. Prompt access is not assured

The regulations (212.10(a)) provide that the Forest Service will use an application to cross national forest lands as an opportunity to acquire needed rights across private lands. This involves negotiations which may take considerable time to consummate. The Forest Service can always acquire prompt access by condemnation, if by no other means, but the private landowner can acquire prompt access only by meeting the demands of the Forest Service, or by accepting a temporary permit without any protection of his investment through continued rights to use the road he builds across national forest lands. However, prompt granting of such a permit is not guaranteed by paragraph 212.10(a) or any other section of the regulations. An appropriately worded addition to S. 1147 has been suggested to eliminate this problem which is usually of paramount concern to both large and small timber operators.

6. Designation of special service roads by agreement

This matter is related to the matter of control of roads discussed in 3 above. One of the most pressing needs is the right to assure by cooperative agreement that road uses can from time to time be limited only to certain uses. The regulations now vest the authority for designating roads as special service roads solely in the Chief of the Forest Service 212.7(b). The regulations should provide that special service status be a feature subject to negotiation and agreement. Conditions governing the designation of special service roads should be clearly set forth in the regulations.

No proposal has been advanced in connection with S. 1147 which treats this matter.

7. Reasonable performance bonds and insurance requirements are not permitted

The regulations should provide that the Forest Service will require its permittees using roads crossing private lands to furnish to the private landowner such protection of his property interests as is available from a performance bond and insurance coverage. Private landowners, the States of Oregon, and Washington, and the Bureau of Land Management commonly provide such protection, but the Forest Service is most reluctant to do so.

Bonds posted under timber sales contracts do not cover these risks. The insurance does not, of course, increase the liability of the permittee but it does provide a source of recovery once liability is established. The private landowner should not have to rely for protection of his property upon Forest Service enforcement of fire regulations or of the contracts it may have with some of the users of the road.

S. 1147 and the proposed amendments are not concerned with these points.

8. No road use agreements between Forest Service permittees and the landowner are permitted

In order to afford the roadowner an effective remedy in the event haulers of national forest timber cause injury to persons or loss or damage to property, such haulers should be required to obtain a road use permit from the roadowner.

The Bureau of Land Management under its O. & C. right-of-way regulations requires its permittees to enter into private contracts with the landowner on forms previously agreed to by the BLM and the landowner. Such contracts give the landowner a directly enforceable right against the permittee. Assistant Secretary of Interior, John A. Carver, in commenting on this particular point in a letter to Senator Morse dated January 25, 1963, said: "This arrangement has worked very satisfactorily and provides adequate protection for all parties involved." It must be observed that such arrangements would in no way affect the duration of the grant to the Forest Service. The sole purpose of such an agreement is to hold accountable the individuals exercising these rights. The absence of this and other reasonable protective devices are further deterrents to cooperative road agreements which it is hoped will be worked out through continued negotiation, rather than by legislation.

9. *Road costs are not equitably shared by all users*

Because roads affording access to national forest lands frequently are built to standards sufficient to accommodate uses other than timber hauling, the construction and maintenance costs of such roads should be borne by all users. Although the Forest Service has indicated agreement with this principle, the standards for implementing it are not contained in the regulations.

10. *Summary*

One could accurately summarize our concern with the regulations by saying that the regulations fail to recognize the legitimate long-range management needs of the land in non-Federal ownership located within the exterior boundaries of the national forests. Secretary Freeman's letter to Chief Cliff, dated June 10, 1963, is encouraging on this point. In that letter, the Secretary reminds the Forest Service to "* * * recognize the rights and privileges of the owner of intermingled and related lands in private and other ownership."

Moreover, as you know, the industry feels quite strongly that denial or delay in granting access rights should not be used as a lever to acquire an interest in the property of one's neighbor. Again, Mr. Freeman's letter recognizes our concern. He admonished the Forest Service "* * * to reach prompt decisions as to action to be taken on applications to use roads or occupy national forest lands under these regulations."

I am enclosing copies of two reports of the Committee on Timber and Vegetative Resources, section of mineral and natural resources law of the American Bar Association. These reports were presented to the association's annual meetings in 1962 and 1963. Read together, I believe they show ample justification for our concern with the present Forest Service access regulations.

I am also enclosing copies of revised alternative wordings which would accomplish the purpose of the additions which were proposed by Mr. Orell on behalf of the industry at the June 11 hearing. These were drafted at the completion of discussions held with Forest Service personnel and with representatives of other groups during the past few days.

May I extend my gratitude both personally and on behalf of those who made the presentation of industry's position on June 11 for yours and the committee's diligent interest in this matter and for the opportunity to make these extended remarks. I sincerely hope that the above information will be useful to the committee in reaching a full understanding of S. 1147 and the need for the additions to the bill as suggested by Mr. Bernard L. Orell at the hearing. I hope that this statement can be made part of the record also.

Sincerely,

JOHN B. CROWELL, Jr., *Attorney, Georgia Pacific Corp.*

Mr. ORELL. Thank you.

Senator RANDOLPH. Senator Cooper?

Senator COOPER. I must say that just from the reading of S. 1147 and the testimony we have heard, particularly your testimony, it raises some very important and difficult questions, we all recognize. I would like to ask that the chairman and members study the bill and the testimony, and I think particularly this testimony that has been offered, if we could address, I think to the committee staff, and let our questions then be sent to not only the Department but also to Mr. Orell here, questions which then they could answer and they will be made a part of the record.

Senator RANDOLPH. Senator Cooper, I think that is helpful. We are plowing into new ground here somewhat, and in an effort that the committee will act intelligently I think this is helpful.

Mr. ORELL. We would certainly be happy to.

Senator COOPER. May I ask just one question? Prior to the opinion which was rendered by the Attorney General, am I correct that under the act of 1897 it was the practice of private individuals to file these requests for access across public lands, and that they were generally granted?

Mr. ORELL. Senator, the act to which you refer, the act of 1897, is the basic organic act establishing the national forests, of which the ingress-egress section was a part. It was the practice to file a request for access and intent to build a road with the Forest Service and under the absolute statutory authority which we felt we had and with which the Forest Service agreed, these were granted very promptly.

Senator COOPER. Were you required to pay compensation?

Mr. ORELL. In some instances the——

Senator COOPER. What?

Mr. ORELL. Usually not. The compensation was nominal as was the practice. Am I not correct in that, John?

Mr. CROWELL. There would be no compensation charged with a bare land easement being acquired by a private landowner. The bare land easement would be used for construction of a road on forest land by the private land owner at his expense. Where the private land owner is seeking use of an already constructed road, there was no fee charged until the recent General Accounting Office rulings within the last few years.

Senator COOPER. I am going to defer my questions. I think I will put them in written form and submit them.

Senator RANDOLPH. That can be done.

Mr. ORELL. Mr. Chairman, I believe Mr. Crowell has a statement he wants to file.

Senator RANDOLPH. Yes, Mr. Crowell.

Mr. CROWELL. I was asked, Mr. Chairman, by Mr. William D. Hagenstein, the executive vice president of Industrial Forestry Association, headquartered in Portland, Oreg., to file with the committee for inclusion in the record a statement by Mr. Hagenstein.

Senator RANDOLPH. We will consider not only your statement, Mr. Crowell, but the statements of all gentlemen filed with the committee as if read, and you may make such comments as you wish.

Mr. CROWELL. Thank you.

Senator RANDOLPH. Mr. Hagenstein's statement will be printed in the record.

(The statement referred to follows:)

INDUSTRIAL FORESTRY ASSOCIATION,
Portland, Oreg., June 7, 1963.

Re S. 1147.

HON. JENNINGS RANDOLPH,
Chairman, Subcommittee on Roads,
Senate Committee on Public Works,
Washington, D.C.

DEAR MR. CHAIRMAN: Attached please find two copies of a statement prepared by the undersigned in behalf of Industrial Forestry Association on the above-captioned bill. Inasmuch as it is impossible for us to appear personally before your committee on June 11 when you are holding hearings on S. 1147, it would be most appreciated if you would include this letter and attached statement in your hearing record.

We are greatly appreciative of the response of your subcommittee to holding hearings on the bill, which hearings were recommended to the Oregon and Washington congressional delegation as a result of a resolution passed by our subscribers at their annual meeting in late April.

Thanking you for your courtesy, and with kindest personal regards, I am,

Sincerely yours,

W. D. HAGENSTEIN,
Executive Vice President.

STATEMENT OF INDUSTRIAL FORESTRY ASSOCIATION, PORTLAND, OREG.

The Industrial Forestry Association was organized in 1934 to develop a permanent timber supply throughout the Douglas fir region of western Oregon and western Washington. Currently it consists of 92 companies and individuals engaged in growing, protecting, and harvesting forest crops and manufacturing and merchandising every kind of forest product. IFA members operate 370 manufacturing plants and more than 200 logging operations, own 7,350,000 acres of forest land of which $6\frac{1}{4}$ million have been certified as west coast tree farms, and employ 75,000 persons with an annual payroll of about \$400 million. Their operations and lands are situated in each of the 38 counties in the western halves of the 2 States.

IFA membership in 1962 produced $5\frac{1}{2}$ billion feet of logs from their own lands and under contracts with public agencies and other private timber owners. They also purchased another $1\frac{1}{2}$ billion feet of logs from other producers and the equivalent of $1\frac{1}{2}$ billion feet of logs in the form of wood chips. Log consumption by IFA members is about two-thirds of the region's total wood consumption. In the last 5 years IFA members have purchased one-third of the timber sold by the 10 national forests in western Oregon and western Washington.

IFA members, being rooted to the land, and with an average operating history of 40 or more years—with a number of them going back 60, 75, and two over 100—are the economic backbone of our region.

IFA members have long recognized that permanent access is the key to permanent forestry, regardless of whether the lands are publicly or privately owned. Because of the intermingled land ownership in many parts of the Douglas fir region, the result of various railroad land grants and public land laws, it is absolutely essential that all intermingled owners work together to achieve permanent access to their properties. Without it, neither public nor private owners can adequately protect their forests against fire, insects, and disease or harvest and reproduce them and thus discharge their social and economic obligations to the adjacent communities which were primarily established because of the forests.

Industrial Forestry Association has long emphasized to the Congress and the public the need for managing the national forests on a sustained-yield basis because of their importance to the economy of our region. For example, in the Douglas fir region of western Washington and western Oregon, the national forests comprise 7,139,000 acres of commercial forest land, or 28 percent of the region's total. Ten years ago, the latest estimated timber inventory showed that the national forests of our region had more than 220 billion feet of timber, or three out of every eight trees. Because of disproportionate harvesting of trees from private lands, in comparison with their inventory, during the last decade, we estimate that the national forests now have about half our region's total timber volume. It is obvious that the industry needs and wants the Government to keep selling its full allowable cut if it is to survive. For many years the principal raw material for our plants and our whole industry came principally from private timber. Now Federal timber is the most important single supply to bridge the gap while the new crop now growing on millions of acres of our tree farms reaches usable size.

This is why IFA has worked for many years to get adequate recognition of the need for timber access roads in the national forests, for the need of adequate protection against their destructive enemies of fires and insects, for the need for prompt salvage of dead timber to minimize fire hazards and help control insect epidemics, and for the necessity for adequate personnel to protect, inventory, and manage the national forests at their optimum sustained-yield level. We have appeared many times before the Congress in the last 15 years to urge increased authorization for timber access road appropriations, urged adequate appropriations for roads as well as for insect control, timber salvage, up-to-date inventories, recalculation of allowable cuts, and everything necessary to allow the Forest Service to comply with one of the two basic purposes established for the national forests, namely, "to furnish a continuous supply of timber for the use and necessity of the citizens of the United States," as set forth in the act of June 4, 1897. When the Secretary of Agriculture in 1959 advanced his "program for the national forests," we supported it vigorously before the Congress.

Where public and private forests are intermingled there is mutual need for access if both parties are to manage their properties successfully.

All forests not only need access but they need it promptly. A current example of such need is the natural catastrophe of the Columbus Day windstorm of last fall which blew down more than a year's annual timber cut in the Douglas fir region. The areas in which this occurred must be reached and the timber salvaged promptly if losses to the resource are to be prevented both from deterioration and the inevitable tree killing by bark beetles.

Neither a private owner nor the Government, acting for the public which owns the national forests, should impose unreasonable restrictions on the granting of access to one another. Nor should either try to get a free ride over the investments of the other who has constructed the access through the intermingled lands. Both parties should be willing to submit differences of opinion as to the values involved for the rights sought from and granted to one another to third parties for determination so as to solve promptly the access needs of both. In the case of the Government it can always resort, under its power of eminent domain, to condemnation and the courts determine the equities.

The Forest Service has long adhered to the prudent operator concept with respect to the construction of roads in that, as part of its timber sale contracts, it has never required a timber purchaser to construct a road to a higher standard than that necessary for a workmanlike job of forestry. Where the Forest Service has built roads to a higher standard for multiple-use purposes, it has generally used appropriated funds rather than trading Government timber, through allowance of the road cost in its appraisal, to get a road built to the higher standard. With the considerable increase in both authorizations and appropriations for forest development roads for the national forests in the last 15 years, all of which have been aggressively supported by IFA, there is no sound argument why the prudent operator concept should not be maintained.

In connection with timber sales it is extremely important to adhere to the prudent operator concept. This is self-evident, because to the extent that the roads are built beyond that standard and the additional cost not paid for by appropriated funds, the timber must bear a greater share of road costs than it should and would be appraised at lower prices. Consequently both the Treasury and the counties which depend heavily on national forest timber receipts for revenue would suffer.

To summarize, all forest owners need permanent access—and they need it promptly. Third party should decide when values are in dispute. The prudent operator concept should be maintained because of its fairness to everyone concerned.

The authority which enactment of S. 1147 would vest in the Secretary of Agriculture to grant easements over national forest lands is a step in the right direction. However, the bill is extremely complicated and leaves the definite impression that only the Government can decide what the equities are. It implies also that only Government needs permanent access.

Industrial Forestry Association has studied S. 1147 carefully in concert with other regional associations representing private landowners with holdings inside the national forests and the National Lumber Manufacturers Association. The latter organization is making a number of specific recommendations for amendment of the bill. Industrial Forestry Association concurs fully with the NLMA recommendations, as members of its road committee participated in their development.

Mr. CROWELL. I also had a prepared statement which I would submit on behalf of my own company, Georgia-Pacific Corp. I will not take the time to go through that statement now, asking only that it be included in the record. I will say briefly that it furnishes a number of examples which tend to support the suggested additions to section 2 of the bill.

The statement also indicates support for the principle of section 2 which would authorize the Secretary of Agriculture to grant permanent or temporary easements as the case might be.

I might comment in response to a question which was raised I believe by Senator Miller as to why permanent easement granting authority is necessary. Senator Miller questioned why easements should be permanent. The answer to that question is that the Forest Service

requests permanent easements from private landowners. This is a legitimate form of request and since the private landowner has the same objectives as the Forest Service does in wanting permanent access to his land, it seems proper, and certainly will expedite the exchanges of easements between the Forest Service and private landowners, if the Forest Service can grant reciprocally a permanent easement when it receives one.

Thank you.

(The statement of Mr. Crowell follows:)

STATEMENT OF JOHN B. CROWELL, JR., GEORGIA-PACIFIC CORP.

I am John B. Crowell, Jr., of Portland, Oreg. I am an attorney for Georgia-Pacific Corp. whose principal office is in Portland, Oreg. Georgia-Pacific produces plywood, lumber, and paper products. Its timberland holdings are principally in Oregon, northern California, Arkansas, Maine, Virginia, West Virginia, and North Carolina.

Many of its lands, particularly in Oregon and northern California, are adjacent or in proximity to national forests with whom mutual access problems, consequently, are frequently shared.

The two basic objectives of any landowner are that he wants to be able to reach his land and he wants to be able to utilize his land with as little restriction as possible. These objectives are the same for both public and private land owners. Since landowners of both classes seek the same basic objectives the stage is set for mutual exchange of access rights in many instances. Where exchange is not feasible because one party does not require access rights from the other party, the right can be obtained, aside from gift, only by purchase. Thus, the two touchstones for working out access problems are mutuality or reciprocity in the case of exchanges, and fair price in the case of purchase.

At the present time there is inadequate basis for achieving reciprocity between the Forest Service and private land owners in any right-of-way exchanges which may be proposed by either side. The chief reason for this is the inability of the Forest Service, through the Secretary of Agriculture, to grant permanent easements across national forest lands. It is also true under the recently pending and now promulgated Forest Service right-of-way regulations that there is too little assurance of a fair price being charged or paid by the Forest Service in cases of purchased rights-of-way.

As has been said, the largest barrier by far to an exchange on a reciprocal basis is the Forest Service inability to grant permanent easements. Despite this inability the Forest Service continues to insist on achieving full use of its own land by requiring permanent easements from private land owners.

Thus, in an intermingled ownership pattern as is so common in parts of the West, the Forest Service may want to build a road across private land to reach Forest Service land, while the private land owner may want to continue the road across Forest Service land to reach more of his private land. Under current procedures the Forest Service will want a permanent easement across the private land. The private land owner would in most cases assent to this if he in turn is given a permanent easement across the Forest Service land. The Forest Service replies, however, that it can offer only what amounts to a revocable permit. With this first failure of reciprocity or mutuality evident, the negotiation may terminate at that point with the Forest Service having to resort to condemnation to obtain what it wants.

If, however, the private land owner wants access to his own land badly enough, he may suggest that he will accept the revocable permit if the Forest Service will, in view of its own confessed inability to give as good as it gets, accept from him a like permit. The Forest Service reply to this will be that they are not authorized to spend moneys for building roads on private lands unless they have assurance of permanently enjoying the use of such roads.

The private owner may then suggest that he is willing to accept a revocable permit across Forest Service land if the Forest Service will accept from him a permit across his land which he reserves the right to terminate in the event the Forest Service at a later date withdraws the consideration it gave by terminating the permit to him. Although the Forest Service has in the past accepted this solution, it has not, so far as I know, been willing to go even this far for at least 2 years now. It does not say why.

Section 2 of S. 1147 would clear away all these difficulties by authorizing the Secretary of Agriculture to grant permanent easements. Obviously, Georgia-Pacific joins with everyone else who favors such legislation. Section 2 of S. 1147 alone would go a long way toward assuring reciprocity and mutuality.

Looking now at another illustration, let us suppose that a landowner desires to use 1 mile of road on national forest land. The Forest Service counters with a demand for use of 2 miles of one of applicant's roads. The first sentence which has been proposed as an addition to section 2 of the bill would permit the Forest Service to withhold the requested grant only until the private landowner had agreed to grant a right equal in value to the right he has requested; presumably in this example it would involve use of 1 mile of applicant's road. Use of the additional mile of road by the Forest Service would have to be paid for at fair value, according to the first sentence proposed as an addition to section 2.

Pursuing this illustration a little bit further, it may appear that the Forest Service proposes to make only half as much use of the applicant's 2 miles of road as the applicant will make of the 1 mile of Forest Service road. In that case, the proposed addition to section 2 would not prevent the Forest Service from withholding the grant until the private owner was willing to offer reciprocal value.

Let us assume still another situation. A private landowner may wish to construct a road across national forest land as a continuation of many miles of road lying on his own land so that more of his own land can be reached. The Forest Service may want to use the whole road. The process of working out the relative uses and the reproduction cost of the road in order to determine the values involved from the standpoint of both parties is a long and arduous process. Past experience has shown that it sometimes takes several years. Mill operations, however, should not be handicapped by a long delay in acquiring the needed access. To avoid such an eventuality, industry has proposed a second sentence for addition to section 2. The first part of the sentence assures that access will not be held up in a situation like the one above assumed; the second part of the sentence gives to the private party a right to recover a proportionate share of the cost of the improvement placed on national forest land if and when the Government makes use thereof. Thus, reciprocity is assured to the landowner who, when the Forest Service builds a road upon his land, is required to pay for any subsequent use he makes of that road.

The third and last sentence of the addition proposed for section 2 also serves to assure reciprocal treatment for the landowner on the terms which have been established by law and Forest Service practice. It will require the Forest Service to recognize as recoverable investment amounts already expended for improvements placed on Forest Service land and which the Government later uses. This addition would also prevent loss of the value of the improvement without any compensation in the event of a taking for some governmental function.

Georgia-Pacific Corp. regards section 2 of S. 1147, along with the proposed additions thereto, which have been discussed in this statement as the heart of the pending legislation. It will go a very long way toward assuring reciprocity and mutuality in any right-of-way exchanges and toward assuring that fair compensation is charged and paid in any right-of-way purchases. We heartily commend it to you as a very significant bit of legislation.

Senator RANDOLPH. Thank you, Mr. Crowell. I will only pose one, slightly provincial, question.

What is your holding of timber in West Virginia?

Mr. CROWELL. We acquired in 1960 the former Ritter company land and we have extensive acreage of timberlands and mineral lands in the State of West Virginia. We also by that acquisition acquired some land in North Carolina, Senator.

Senator RANDOLPH. Hardwood timber in West Virginia?

Mr. CROWELL. Yes, sir.

Senator RANDOLPH. The finest in the world, is that right, sir?

Mr. CROWELL. I couldn't say otherwise.

Senator RANDOLPH. Thank you, Mr. Crowell.

Mr. ORELL. Mr. Chairman, I also would like to ask Mr. George Craig, secretary-manager of the Western Lumber Manufacturers Association from San Francisco, who will address himself particularly to section 4, the so-called prudent operator rule section.

Mr. CRAIG. Mr. Chairman, gentlemen, Mr. Orell has identified me. Our organization is an association of operators who are dependent on national forest timber. We have about 42 members, most of which are in California.

The national forests are extremely important in the West where they dominate great areas, and the road programs in connection with them are equally important. We feel that policy for the establishment of these road systems should be developed through congressional action. The needs of the road facilities in the West are indicated by studies referred to earlier made by the Forest Service. They indicate, for example, in Montana that 70,000 miles of roads are needed to develop the national forests in that State. And equivalent mileage is needed in Idaho. California needs 63,000 miles. Oregon and Washington have a system now that has over 29,000 miles and still needs over 26,000 miles.

Timber built these roads. In the Pacific Northwest region of Oregon and Washington the Forest Service has reported that over 95 percent of the road mileage developed in the national forests is done by timber purchasers in connection with timber sales.

Senator JORDAN. May I ask a question there, Mr. Chairman?

Senator RANDOLPH. Yes, indeed, Senator Jordan.

Senator JORDAN. How is that accomplished?

Mr. CRAIG. It is accomplished by requiring the timber purchaser to construct roads over which he will remove timber, and the price of the timber usually is reduced by the estimated cost of constructing that road. I say usually because this isn't always the case.

There is a sale being advertised in California at this moment which would require a road of \$108,000. The job would have to be completed in less than 2 years. The timber that would be taken out would have the price partially reduced to compensate for the road construction. However, the values involved in this timber sale are not sufficient to compensate for the road construction and provide what the Forest Service considers to be a normal profit opportunity to the operator.

In this particular instance, if the timber market were not to change, if circumstances were continued as estimated, if the volumes were cut out as the Forest Service estimates, this particular purchaser, if the sale is sold, will end up \$48,000 short of what the Government considers to be a normal profit opportunity. In this particular case if the timber were given to the operator, if he paid no money for the timber, he would still end up \$10,000 short of what the Government considers to be a fair profit opportunity.

This is the way in which this work is done, and the costs of these programs are great. In the past four calendar quarters in Oregon and Washington timber sales have been made which involved \$28 million worth of road construction. This is exclusive of any profit opportunity on this \$28 million. This will be picked up in reduced timber charges generally.

These are very important and critical issues for timber purchasers who are dependent on national forest timber for their survival. This is the reason why we are particularly interested in section 4 and section 6. We feel that the amendments which have been proposed would relieve some of the threat to timber purchasers that they may

be required to put in roads beyond those needed for the removal of the timber being offered for sale.

As has been indicated here earlier, timber purchasers could be required to build roads of higher standards than those needed by the immediate sale. This is to a certain extent true also of provision 6 which has to do with reconstruction and maintenance requirements. We feel that reconstruction and maintenance requirements should be prorated to all users. There is no particular reason why timber should carry the burden, or that timber should have to pay its share first. There should be some way of charging equally to other users.

We have had this discussion and description of maximum economy roads. We are in agreement that sound financing of these roads would indicate that roads of the standard expected to be needed should be built. But we don't feel that this should be done at the cost of the timber purchaser.

The Forest Service has indicated just in the last couple of months that it has authority to accept deposits to do this sort of work, where either the timber purchaser is not able to or does not wish to do the road construction work, and as written in the present version, even unamended, the last portion of section 4 would authorize the Secretary of Agriculture to make the arrangements necessary to get this work done.

We want to make sure that the prudent operator concept is included in the legislation.

I might say in conclusion that timber purchasers depending on national forests are to some extent under a compulsion to accept onerous requirements. If they do not accept the timber that is being offered under the conditions it is being offered, they then lose investments, cause unemployment, and must close their activities. In many areas they do not have a choice of raw material supplies.

For these reasons, we hope you will find it possible to give careful consideration to the industry's recommendations.

Thank you.

Senator RANDOLPH. Thank you very much.

(The prepared statement of Mr. Craig is as follows:)

STATEMENT OF GEORGE A. CRAIG, SECRETARY-MANAGER, WESTERN LUMBER MANUFACTURERS, INC., SAN FRANCISCO, CALIF., ON S. 1147

I am George A. Craig, secretary-manager of Western Lumber Manufacturers, Inc., an association of lumber producers who are dependent on national forest timber. Most of our 42 members are in California, and our headquarters are in San Francisco.

The national forests dominate large areas of the West. They are extremely important to our economy. Road programs on national forests provide our economic lifelines. Sound public policies are needed to permit orderly road development.

We recommend that basic national forest road policy be established by Congress through law rather than by the administrators through regulation. Dependent employment, investments and communities need the stability of statutory road policy. The administrators of the national forests become involved in numerous controversies which can be better resolved under guidelines set by Congress rather than by regulations developed by one of the parties to the controversies.

We believe that the needed policy can be provided by S. 1147, if it is amended to limit construction requirements for timber purchasers by the "prudent operator" concept. As a matter of equity, other amendments should provide prompt access and protection in value determinations where private lands are involved.

Purchasers of public timber know that an enlarged road program is needed to assure full development of the national forests. We have consistently favored enlarged road budgets so that the public's forest resources might make their proper contribution to the economy. The Forest Service report that Montana and Idaho each need 70,000 miles of national forest roads constructed or reconstructed. California's needs are given at more than 53,000 miles. The national forests of Oregon and Washington have 29,500 miles of development system roads, and 26,300 miles are planned for construction in the current 10-year program.

Timber purchasers have been the principal builders of national forests roads. Unless a timber sale is to salvage timber damaged by wind, fire, or insects, the purchaser usually is asked to build a part of the permanent road system for the national forests. The Portland office of the Forest Service has stated:

"Most roads built in the next decade will be constructed by purchasers of Government timber, as part of the necessary cost of removing timber from a sale area. (Roads built by timber purchasers under sales contracts amounted to 96.5 percent of all roads built in the Pacific Northwest region for the Forest Service in fiscal year 1961.)"

The cost of such work totals many millions of dollars each year. In the immediately past four calendar quarters, Oregon and Washington timber purchasers have bought national forest timber requiring \$28 million in construction of permanent roads. During those 12 months there were 78 sales in that region that had timber purchaser road jobs costing over \$100,000 each. Five of these had estimated costs exceeding \$300,000 each.

Road costs frequently are equivalent to more than half the advertised price of the timber being sold. Most timber is sold in the second quarter of the calendar year, and the Pacific Northwest region is by far the largest seller. In that region in the second quarter of 1962, 2½ billion board feet of timber was advertised for sale at an average rate of \$11.76 per thousand board feet while the estimated average cost of purchaser construction of permanent roads was another \$6.70 per thousand board feet. Comparable figures for the third quarter were \$10.38 and \$6.10, and for the fourth quarter, \$14.38 and \$6.11.

In many instances, the purchasers of national forest timber have not been fully compensated for the cost of the road construction they accomplished in connection with timber sales. In some cases, this results from inaccurate estimates of the volume of the timber to be cut. More frequently in recent years, the road cost has been so high, compared to the timber values involved, there has not been sufficient value available from the timber to pay for the roadwork and still allow what the Forest Service considers to be a normal profit allowance.

Typical of timber offerings with unrecoverable road costs is the Tantrum unit, currently being advertised for sale in California. It is expected to total 19.7 million board feet, including 5.4 million feet of ponderosa pine, 2.8 million feet of sugar pine, 7.8 million feet of white fir, 1.9 million feet of Douglas-fir, and 1.8 million feet of incense cedar. The system-road costs, exclusive of profit on the road work, is expected to total \$108,008, to be written off on 80 percent of the volume at \$12.43 per thousand board feet on the ponderosa pine, \$10.23 per thousand feet on the sugar pine, and \$5.90 per thousand on the Douglas-fir.

High road costs and low values will prevent the Tantrum unit from fully paying out. After the road cost has been written off on 80 percent of the volume in the normal sale, the stumpage rates are increased by the amortization rates for the remainder of the timber. In the Tantrum unit, this would mean an increase of \$26,995 on the last 20 percent, if the volumes turned out to be exactly as estimated. However, with the pine at the "minimum price" of \$3 per thousand, the Douglas-fir at \$2, and the white fir and incense cedar at \$1 per thousand, the total cost of the operation and a normal profit for the first 80 percent of the volume would exceed the anticipated realization by \$75,200. Timber rates are not increased on the last 20 percent until such deficits are offset. With the timber prices on the last 20 percent of the volume kept at "minimum," the purchaser would still be short of a normal profit by \$48,200 in the Tantrum unit (that is, \$75,200 minus \$27,000). If the purchaser built the road and made no cash payment for the timber, he still would be short \$10,000.

This discussion has indicated that there are some complexities in the pricing procedures for national forest timber. There have been and are other pricing practices affected by road costs. One of these is the use of an escalator which adjusts stumpage rates by half of the charge in certain indexes of forest product prices. Theoretically, when prices decline, the stumpage rates would be adjusted downward.

As now used, the escalator cannot take the stumpage rates below base rates which often equal the minimum rates mentioned earlier. However, there is no limit on upward escalation. If downward escalation is prevented by base rates, an account is kept of the ineffective escalation. In such cases, if the market rises after the drop, upward escalation is delayed until the ineffective downward escalation has been offset.

This practice of delaying upward escalation under certain circumstances may be of some help, but it does not bring full equity in the use of the escalator. This is only possible when the price of the timber is high enough above base rates to permit full downward escalation. High road costs usually are the reason that stumpage rates are too close to the base rates for proper escalation. This difficulty is compounded by the downward trend that forest products prices have had for more than 10 years.

With this background information, the reasons for the industry's interests in sections 4 and 6 may be evident. We agree that the Secretary should be "authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof, and for utilization of the resources thereof."

The words "maximum economy" indicate that the standards for such roads may be higher and the cost greater than for roads needed only to remove timber from a specific timber sale unit. The maximum economy roads would be designed to handle future timber sales as well as the current unit. Other uses besides timber removal would be accommodated on a long-term basis. Such considerations could add greatly to the initial work and cost of the roads. However, efficient use of public funds often demand the construction of the higher standard roads.

If it is the will of the Congress, we would accept the determination that financing of such roads "may be accomplished (1) by the Secretary utilizing appropriate funds, (2) by requirements on purchasers of national forest timber and other products, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and private agencies or persons, or (4) by a combination of these methods." However, it should be noted that this wording would give much greater latitude to the Secretary of Agriculture. He would be free to convert timber values into roads to a much greater extent than is now possible under the findings of the Comptroller General. This would be a way of financing needed roads.

We are concerned that under the original wording of section 4 timber purchasers could be required to accept road construction as their principal function in the forest. In many cases and great areas, where there are no alternate sources of supply, acceptance of the role of road contractor would be under compulsion, since many operators must buy national forest timber or lose investments and cause unemployment. For this reason, the industry proposed that the provision in section 4 be amended to read:

"Provided that where roads of a higher standard than that needed in a particular sale in the harvesting and removal of the timber and other products from land tributary thereto are to be constructed, the purchasers of national forest timber and other products shall be required neither to construct that part of the road necessary to meet such higher standard nor to bear any of the cost thereof, and the Secretary is authorized to make such arrangements to this end as may be appropriate."

The changes recommended are the addition of the words "in any particular sale" and a limitation on construction requirements to assure the purchaser that he can be required to do no more than would be expected of a "prudent operator." The Forest Service and the industry understand a prudent operator to be one who would build a road to a standard whereby a combination of his construction costs and his hauling costs would be at the lowest point. His objective is the lowest combination of construction, hauling, and maintenance costs, including maintenance of both roads and trucks.

S. 1147 would authorize the Secretary of Agriculture to make the necessary arrangements to finance road construction without requiring purchasers to go beyond the prudent operator concept: the Forest Service has noted its authority to

accept deposits of the cost of such work and can perform the construction with deposited funds. The Chief of the Forest Service wrote on April 4, 1963:

"Thus, in any situation where a prospective purchaser would not have the necessary roadbuilding equipment or would not desire to perform the road construction himself, he can, and we are willing to work out arrangements for him to make deposits with the Forest Service of the cost of the work and the road construction can be accomplished with those deposited funds."

This, or some other arrangement, such as construction of a portion of the road by the purchaser, could be developed to meet the needs of both the purchaser and the Government.

The industry has suggested amendment of section 6 to provide for sharing of both maintenance and reconstruction on a proportionate basis where appropriate. We endorse this proposal and suggest that it could be considered for original construction. There is no particular reason why timber use should be charged first and other uses later or not at all.

We appreciate the consideration given to these views by the committee. We sincerely urge favorable action on the industry's proposed amendments.

Senator RANDOLPH. Mr. Orell, in order that the record may be complete, I believe that you have submitted to the Forest Service changes or proposed changes that you would like to see incorporated in the regulations with reference to this matter. I believe you submitted those to the Secretary of Agriculture. Is this true?

Mr. ORELL. That is true.

Senator RANDOLPH. I think this should be made available as a part of our hearings.

Mr. ORELL. Senator, we will be very glad to do this, and we will do so.

Senator RANDOLPH. Off the record.

(Discussion off the record.)

Senator RANDOLPH. On the record.

The hearing today will not complete the consideration by the subcommittee of the subject matter. We will continue our study of S. 1147. We will decide if there might be a reason for a hearing in the field. That has not been determined. I know there have been some requests that this be given consideration. But we will continue to receive material. The record will be kept open. And we may call back Forest Service officials who have testified this morning, as I have indicated. The hearing today is helpful. It has indicated some differences of opinion, but I think more importantly it has demonstrated that insofar as purpose is concerned, we are all agreed. Is that true?

Mr. ORELL. That is correct, Senator, and may I also add to that we again appreciate your patience with us. We feel very strongly that the passage of S. 1147 with these additions will protect the access and provide access, for both the national forests and the private industry on an adequate, equitable basis.

Senator RANDOLPH. Thank you.

Senator METCALF (now presiding). Mr. Orell, do you have some other statements?

I am looking forward to the testimony of my own constituent.

Mr. ORELL. Mr. Chairman, with your permission, then, I will introduce him next. I know I don't have to introduce him to you. This is George Neff, land manager for the Anaconda Forest Products Co., a division of the Anaconda Co.

Senator METCALF. Delighted to have you here, Mr. Neff.

Mr. NEFF. Thank you, Mr. Chairman.

As you know, we have extensive holdings in Montana which are intermingled with Forest Service holdings and it is absolutely necessary that we cooperate with the Forest Service in the development and management of those lands. We feel that this proposed authority for the Forest Service to grant permanent easements is necessary for our continued management of tree farms in that area.

One item which was raised I believe by Senator Miller in his questions to Mr. Florance I think has not been fully explained. That was the provision in section 2 which authorizes the Secretary to grant permanent or temporary easements over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

I think the best illustration of the need for that particular provision is in connection with cooperative road construction and use agreements where private owners and the Forest Service wish to construct a road together and to finance that construction jointly. The problem is apparent if you take the situation where no road has been constructed and the Forest Service has merely acquired rights to cross other owners. And these rights-of-way give them, as a part of the grant, authority to convey a portion of their right to other parties.

In this situation, the private owner or owners, and in Montana, for instance, it is quite often the Northern Pacific and Anaconda joining with the Forest Service, wish to help finance the construction of the road, but if the Forest Service is unable to convey to them a satisfactory long-term easement, the owners are reluctant to enter into the cooperative agreement in the first place.

What I want to point out is that we not only need the right for the Secretary to grant permanent easements on national forest land, but over these so-called third-party easements.

I agree with you, Senator Metcalf, that Mr. Orell made a very complete statement. We agree with what he has said. I believe that I have nothing further to add.

Thank you.

Senator METCALF. Your statement, as submitted, will be made a part of the record as if read.

Mr. NEFF. Thank you.

(The prepared statement of Mr. Neff follows:)

STATEMENT BY GEORGE NEFF—LAND MANAGER, THE ANACONDA CO., ON S. 1147

Mr. Chairman and gentlemen of the subcommittee, my name is George Neff. I am a professional forester and serve as land manager for Anaconda Forest Products, a division of the Anaconda Co., with headquarters at Bonner, Mont.

We operate industrial plants, based on privately owned forest land, in western Montana. We manage our timberland on a permanent basis to provide a perpetual flow of timber into our manufacturing plants.

We are members of the Western Pine Association and have participated for several years in the effort to secure for the Forest Service authority to grant permanent easements over national forest land. The Forest Service must have this authority in order to exchange reciprocal rights-of-way with private timber growers. The Forest Service cannot cooperate effectively with private timber growers whose lands are intermingled with national forest lands unless easements are available which are more dependable than the special-use permits or even the right-of-way instruments granted through the authority of the Department of the Interior. The special-use permits issued by the Forest Service do not provide a good basis for planning and making the

heavy investments now required to develop road systems for the permanent management of private timber-growing lands. We believe that the licenses issued by the Department of the Interior are only a slight improvement over the special-use permits since they are revocable by the issuing officer or his superior. The procedure for granting these rights through the Department of the Interior is both cumbersome and unwieldy. We have been advised by the Office of the Chief of the Forest Service that Department of the Interior easements across national forest lands are permanent. Our examination of the legal authority for such grants does not confirm this belief. Our confidence is not bolstered by the recent complete reversal in the Forest Service position with regard to the right-of-way grants which the Forest Service said repeatedly were permanent under the Ingress and Egress Act of February 4, 1897.

In order to manage our tree farms on a long-term basis we must plan our road systems and other improvements for continued use far into the future. In this respect, our position is parallel to that of the Forest Service. Chief of the Forest Service, E. P. Cliff, in a letter dated March 18, 1963, stated it well as follows:

"Sustained-yield management of the various land resources requires generally permanent or long-lasting improvements, including roads. Permanent or perpetual easements are so uniformly needed that this requirement can be regarded as the normal and usual one."

Chief Cliff was talking about the needs of the national forests. Our requirements for permanent access are no less important to the sustained-yield management of private land resources.

Anaconda forest management plans provide for the complete development of its tree farms. This includes the construction of high-quality roads for the removal of successive crops of merchantable timber. The surrounding communities and the general public benefit from this development through the preservation of watersheds, increased recreation possibilities, and improved hunting and fishing. We are, of course, primarily interested in the growing and harvesting of timber on these lands.

The intermingled character of timberland ownership, which has developed over the years, makes it impracticable in most areas to construct these roads entirely on one ownership. As a consequence, it is frequently necessary, in order to develop private timberlands, to cross national forest property. Senate bill S. 1147 proposes to give to the Forest Service authority to grant permanent or temporary easements over these intermingled lands. This authority is badly needed but will be satisfactory only if the law is equitable and its application allows continued long-term planning and investments on private timber-growing lands.

The Forest Service recognizes this need for permanent access when it requires permanent easements over the private lands which it must cross in the development of its roads. Private tree farmers must have this same degree of permanency in order to logically plan and use their forests.

The bill now being considered provides authority for the granting of permanent easements under such regulations as the Secretary of Agriculture prescribes. We hope that the Congress will be mindful of the need for reasonable regulations and that the legislation and reports of the subcommittee will provide a basis for regulations so that sustained-yield management on private timber-growing lands will be encouraged. Some of the issues that this subcommittee should consider in order to prevent onerous requirements from being imposed on private timber growers are as follows:

1. There should be some assurance that values of rights-of-way and roads will be calculated according to traditional legal and accounting methods so that investments will be encouraged rather than jeopardized. We would like to see the agency adhere to accepted methods of determining fair market value.

2. The Forest Service should not be required to extract the consideration from every timber grower for every crossing of national forest land. Certainly, it should not be allowed to extract a consideration greater in value than the easement needed by the timber grower. This is particularly important in the areas where the Forest Service would have unlimited power over the operator whose lands are entirely landlocked by the Forest Service.

3. Prompt access is another requirement that should receive serious consideration. Inability to reach timber-growing land for both harvesting and management effectively destroys the value of such lands. A delay, even for

a good reason, in granting access can exert overwhelming economic pressure on the timber grower. For this reason some provision for prompt actions on applications for access should be written into this bill.

4. Before termination of a timber grower's easement, as a result of a 5-year period of nonuse, the timber grower should be notified and his plans taken into consideration before there is a determination of cancellation. Some areas will naturally have periods of nonuse greater than 5 years because of the intermittent nature of forestry operations.

5. When considering the advisability of allowing the Forest Service to trade stumpage for road construction beyond that needed for a particular sale, the subcommittee should protect the purchaser from unreasonable requirements for road construction, reconstruction, and maintenance. The purchaser is normally protected if the road requirements are geared to the particular sale which he has purchased. Counties receive 25 percent of the value of national forest timber sales by law and the subcommittee should not allow another increase in the erosion of that law. To allow national forest timber to be traded for roads reduces the 25-percent income to the counties which means that taxes have to be increased and the burden shifted to private timber-growing lands. The timber owners and operators in the intermountain region are quite concerned about the trend to impose more and more requirements on national forest timber sale purchasers that tend to reduce receipts and county income. They hope that this subcommittee will give this subject careful attention. It is a well-known fact that maintenance costs increase as road standards are raised. It is also probable that reconstruction costs will be proportionally higher as road standards increase.

6. In regard to maintenance and reconstruction of roads, timber haulers should not be required to make expenditures that are in excess of their proportion of total road use. The subcommittee should be particularly careful that private timber growers are not forced to pay for roads that are to be used for hauling national forest timber or that are for public or recreational use.

I urge the subcommittee to consider this legislation favorably provided that the changes suggested are made and that the dangers raised are eliminated. Congressional action authorizing the Forest Service to grant permanent easement is long overdue and the recent developments undermining confidence in road agreements must be straightened out so that we can get back to the orderly development and management of both public and private forests.

Senator METCALF. Senator Jordan?

Senator JORDAN. I have no questions.

Senator METCALF. Of course, I again repeat that I am especially pleased to have you before the committee, Mr. Neff, to come here and describe for us the situation in my own home State of Montana, where we have those millions of acres of forest and timber as one of our greatest resources and one of a source of huge industry for the whole people of Montana.

I want to say that I used for an example this morning a recreational access road in the Anaconda Co. and the Northern Pacific. I used them because uniformly those two great corporations have provided recreational access to national forest lands. I regret that some of the smaller operators haven't also provided the same sort of access, especially in some of the finest recreational areas in America. I want to compliment you and the great company you represent for the way in which you have administered this valuable resource in Montana.

Mr. NEFF. Thank you, Senator.

Senator METCALF. Do you have any other witnesses, Mr. Orell?

Mr. ORELL. Yes. I do have two more witnesses who will be very brief. I would like to introduce to you Mr. Waller Reed, forest land manager for the Collins Pine Co. of Chester, Calif.

Mr. REED. I appreciate the opportunity to say a word. I will be very brief. I will let my statement stand as written for the record.

I would like to make one comment that has occurred to me as I

have been sitting here. It has been testified that it is just as needful to have permanent access to private lands across national forest lands as it is for the national forests to have access across private lands. I think where raw land easements are involved that we are certainly reasonable in asking merely that it be a reciprocal grant for raw land easements.

In many cases, however, privately constructed roads—if you will notice the first page of my statement, I am concerned with 600 miles of privately constructed roads—are involved, and when the Forest Service wishes to acquire the rights or a permanent easement on those private roads, it is very pertinent to the interests of the private land owner that he be allowed in the negotiation of the agreement to cover the use of joint control of the road. If he gives away his control of the road, then it becomes a public road for all practical purposes, and by the way, we don't hold the public from using our roads. They are allowed to use the roads but we have to maintain control over them for safety reasons, many times. We use the big off-highway trucks that were in the picture, and from the liability insurance and safety standpoint, it is necessary that while they are being used, we do restrict the traffic. And if we're going to maintain those roads as private roads, keep the trucks off the public highways—which is most pleasing to the State division of highways—we have to have control of those roads ourselves.

We are perfectly willing to share that control, but under the regulations as promulgated yesterday, it is very difficult for us to see how we can maintain the degree of control necessary for our continued operations on those private roads.

Thank you very much.

Senator JORDAN. May I ask a question? Is there any provision in this bill that takes care of that situation as you just stated there?

Mr. REED. I believe that the amendments which have been suggested by Mr. Orell would make that possible.

Mr. ORELL. Mr. Chairman, to answer your question specifically, if the Secretary of the Department of Agriculture is given the authority for granting permanent easements, he then will have the authority in the areas of this matter of control, joint usage and so on.

In other words, the easement that he can grant will be conditioned as a result of negotiations between the Forest Service and the individual company concerned. So this authority is inherent in the legislation as proposed with the additions that we have suggested to it.

Senator JORDAN. Is it spelled out whether he has to do it or he has the authority to do it?

Mr. ORELL. He has the authority to do it.

Senator JORDAN. Would it be a little bit better if you spell it out that he has to do it?

Mr. ORELL. No; I don't think it would. I think you always have to get into an area of negotiations. The difference of opinion between two negotiators is inherent in the matter of developing a reasonable road contract between two agencies—and this goes on constantly between private owners—or an agency such as the Federal Government, the Forest Service, and the private owner. I would illustrate my point, I think, by saying that in the event of inability of the two

parties to reach the objective of joint control of a road and if it was felt by the Forest Service and provable to the Secretary to be essential to the public interest, they then could go through the process of condemnation.

So you see, the authority to grant would help the negotiating situation a great deal from the standpoint of the private owner. But the Forest Service always has had and will continue to have the resort to condemnation to obtain a road they feel they must have.

Senator JORDAN. In which case they would have to pay for it?

Mr. ORELL. They would have to pay value.

Senator JORDAN. Well, that takes care of the situation.

Thank you, Mr. Chairman.

Senator METCALF. Thank you, Mr. Reed, for your suggestions, and again I reiterate, I note you made some comment about the regulations that were promulgated yesterday. You and all the group, all the panel, are to submit your suggestions and your comments on those regulations which this member of the committee hasn't had an opportunity yet to read.

Mr. ORELL. This we will do with alacrity, Mr. Chairman, sir.

(The statement of Mr. Reed is as follows:)

STATEMENT OF WALLER H. REED ON S. 1147

I am Waller H. Reed, a professional forester of Chester, Calif., representing the Western Pine Association and the Collins Pine Co. for which I am chief forester. We operate the Collins Almanor Forest, 90,000 acres supplying the larger part of the timber requirements of our sawmill and flakeboard operations which provide year-round employment for more than 500 persons. In our industry we are considered a medium-size concern. Our forests are managed for long-term continuous production of forest crops and are accessible via more than 600 miles of private logging roads constructed and maintained by our company. For more than 20 years I have been engaged in private timber management, including rights-of-way and roads concerned with access problems upon intermingled private and public ownerships. My experience has been on the ground, in the timber, and close to the source of these problems.

The Western Pine Association is the principal trade group of some 300 lumber mills of the 12-State Western Pine region, where about one-third of the Nation's softwood lumber output originates. The members run the association. Long ago they set up an industrywide policy toward wise use of the forest resource, public and private, and they made it possible, through the association, to speak as one voice in matters such as are under consideration here. Only recently the board of directors voted approval of certain additions or provisions for S. 1147 and its companion bill in the House to safeguard equality of treatment as between Government and private landownership. These proposals are what I shall try to place before you in this statement.

First, however, I should like to emphasize that we fully agree the Forest Service needs the statutory authority that this bill provides for granting permanent easements for road construction on the national forests. We are in complete accord on this point. Moreover, we consider forest access to be in the interest of our industry, our communities, and the people as a whole. That it should be facilitated and properly protected by law is good. We hope the legislation under consideration will be worded to do both.

Legislation of this nature, designed for the lasting good of the people, has a basic obligation to be equitable to both sides. We believe that S. 1147 as written tends to work against private ownership and entrenches still further the extraordinary economic power that the Government has by virtue of its dominant western timber supply. We believe lack of reciprocity is bound to result in endless controversy. Simply stated, a fundamental inequity in this bill as written is that the Forest Service can take much from private owners while granting little.

One aspect of most serious concern is the need for protection of private road investment. There is an inequality of treatment here, not only for private investment on national forest roads but for roads on private lands, privately built and maintained. Timber supply control is an economic force of almost irresistible power. The U.S. Forest Service has this leverage and would consolidate it under this bill.

To make this legislation equitable, private investment in forest roads must be given recognition as to fair values in easement negotiations. The Forest Service should be required to ask only as much as it receives. The price of an easement should not exceed its fair market value.

Prompt access is a priority matter for timber-dependent industries just as it is for the Government. The Forest Service has the tools for prompt access—the right of condemnation plus timber supply control—but the private owner has neither of these. S. 1147 as written places no obligation on Forest Service to act promptly on an easement request. Yet the private owner usually needs prompt access even more than does the Forest Service. He has a mill to supply and cannot adjust his flow of raw material to fit access delays. The Forest Service is free of the economic pressures that daily face the industry.

So, our industry contends that when an easement to cross national forest land is applied for, permission should be granted promptly. It can be issued on temporary terms at first for later negotiation of a permanent agreement. And in negotiating the formal agreement the applicant should not be required to give up more than the fair market value of the easement. It should not be possible for the Forest Service to ask a private owner to surrender permanent rights on his road system in exchange for access rights on the national forest that are revokable at the will of the administrative agency.

Another point at issue is the industry's view that a private owner who has spent money building or improving a road on the national forest should be considered to have a compensable interest in the improvement.

We believe also that the so-called prudent operator clause should continue to have precedence in national forest roadbuilding requirements. The timber industry should not be forced to overbuild roads. Not only do "gold-plated" roads place an intolerable cost burden on timber buyers, but they tend to cut into county revenues from national forest receipts, and they pose the risk of limiting bidding on timber sales.

The western pine industry respectfully urges this committee to write into the bill these safeguards to assure reciprocity in development of the forest resource.

MR. ORELL. I would like to introduce our last panel member, Mr. John Callaghan, secretary-manager, California Forest Protective Association.

MR. CALLAGHAN. Mr. Chairman, our association is composed of timber landowners in California. We estimate that more than 2 million acres of our members' timber-growing land are intermingled with or adjacent to the national forests and will be directly affected by any regulation or legislation governing access across national forest land. We have given this matter a great deal of independent study, that is to say, independent of other associations. However, we have reached the same conclusion that Mr. Orell and the other witnesses have given you today and we would support their viewpoint.

I would, however, like to emphasize one or two points briefly from the standpoint of timberland ownership. The lands I represent are under long-term forest management and provide a substantial part of the tax base in northern California. They have supplied and can continue to supply significant amounts of raw material which we need very much for our expanding economy in northern California, providing their retention and management remains an economic venture.

I would like to point out, as has been pointed out here before, that the investment in the acquisition, management, and development of these lands, including the expensive construction of thousands of

miles of road, has been made in reliance on presumed right of access across national forests lands, and that this right is one which heretofore has not been denied by all Secretaries of Agriculture. They have agreed that we did possess it and it was a right which was balanced to a large extent by the Forest Service's right of condemnation in the event an agreement was not possible through negotiation.

Under this system, many miles of road systems had been cooperatively developed and, in fact, the Chief of the Forest Service did say that to solve most of the Forest Service access problems, what was needed was the right to grant permanent rights-of-way and the right to charge user fees and that the balance could be solved by condemnation.

This was a statement in 1961. Now, the Attorney General's opinion as has been noted overthrows the previous understanding and we feel severely jeopardizes private investment in roads built under this previous understanding.

Further, the regulations recently promulgated fail to recognize the need of a landowner to maintain a share of control of roads across and providing access to his property. We are, therefore, pleased that S. 1147, section 2, proposes to authorize the Forest Service to grant permanent easements. However, we agree with the other witnesses that since the proposed regulations seem to place no real restrictions on the price the Forest Service may charge, in fact, for what we think amounts to a revocable permit for a road which even though it may be on the landowner's property, the Forest Service must then control under the terms of the regulations, so we suggest that the measure of value in this exchange be the fair market value and that it should be subject to court review.

As substantial taxpayers in counties where national forest lands predominate, members of this association are hopeful that the income to the counties from 25 percent of national forest receipts will not be diminished. As is now proposed in S. 1147, to trade timber for roads, receipts to the counties will be diminished which will add to the ad valorem taxload on timber growers in those counties.

We therefore would recommend that section 4 be modified to provide some protection from abuse of the authority granted. We suggest that the standards considered should, as presently is the case under General Accounting Office regulation, be only the standards necessary for the particular sale and not for all the timber that might ultimately be removed over the road as the bill presently provides.

The costs of the extra development should properly, as it is now, be an investment by the Federal Government as a timber owner which it can recover from future sales.

We concur with the recommendations Mr. Orell mentioned with respect to amending section 4, and in addition we would suggest that the committee might wish to consider this additional factor of revenue to the counties and the effect on private timber growers.

If the committee is receptive to that idea, we would like to work with other landowners to develop specific suggestions for further amendments so that the maximum intent of providing 25 percent of actual gross receipts would be accomplished.

Thank you.

Senator METCALF. Thank you.

(The statement of Mr. Callaghan follows:)

STATEMENT OF JOHN CALLAGHAN, SECRETARY-MANAGER, CALIFORNIA FOREST
PROTECTIVE ASSOCIATION

My name is John Callaghan. I am secretary-manager of the California Forest Protective Association, which is composed of timberland owners in California. We estimate that more than 2 million acres of our members' timber-growing land is intermingled with or adjacent to national forests and will be directly affected by any legislation or regulations governing access across national forest land.

These privately owned lands are under long-term forest management and provide a substantial part of the tax base for many northern California counties. They have supplied and can continue to supply significant amounts of raw material needed for northern California's expanding economy.

It should be noted that investment in the acquisition, management, and development of these lands, including the construction of thousands of miles of roads, has been made in reliance upon the right of access across national forest lands presumed to have been guaranteed by the act of June 4, 1897. Land values have been established in reliance on this right of access—a right which all Secretaries of Agriculture for 65 years have agreed landowners did possess—a right which was balanced by the Forest Service right of condemnation to obtain needed rights-of-way across private land if negotiation failed.

Under this system of reciprocal rights a number of road systems have been cooperatively developed between timber growers and the Forest Service. In fact, the Chief of the Forest Service stated, in 1961, that what was needed to permit the Forest Service to solve most of its access problems was the right to grant permanent rights-of-way and the right to charge road-user fees. The balance, he said, could be solved by condemnation.

However, under the February 1, 1962, Attorney General's opinion that landowners did not have a statutory right of access across national forest lands, the Secretary of Agriculture yesterday promulgated new regulations which severely jeopardized private investments in roads built under previously presumed rights. The regulations completely fail to recognize the need of a landowner to maintain a share of control of roads across and providing access to his property.

We are, therefore, pleased that S. 1147 (sec. 2) proposes to authorize the Forest Service to grant permanent easements. The recently promulgated regulations place no real restrictions on the price the Forest Service may charge for what amounts to a revocable permit for a road which the Forest Service will then control. We, therefore suggest that the measure of value be fair market value and that it be subject to court review.

As substantial taxpayers in counties where national forest lands predominate, members of this association are hopeful that the income to the counties from 25 percent of national forest receipts will not be diminished. By increasing Forest Service authority to trade timber for roads, receipts will be diminished which will add to the ad valorem taxload on timber growers.

Therefore we recommend that section 4 be modified to provide some protection from abuse of the authority granted. We suggest that the standards considered should (as is presently the case under General Accounting Office regulation) be only the standards necessary for the particular sale and not for all the timber that might ultimately be removed over the road as the bill presently provides. The costs of this extra development should properly (as it is now) be an investment by the Federal Government as a timber owner which it can recover from future sales.

We concur with the recommendations of NIMA in amending section 4 and in addition we suggest the committee consider this additional factor of revenue to the counties and the effect on private timber growers.

If the committee is receptive, we and some of the other representatives of timber growers will be glad to suggest specific amendments to cover this deficiency.

Senator METCALF. Senator Jordan?

Senator JORDAN. I have no questions.

Senator METCALF. I have no further questions, Mr. Orell.

Mr. ORELL. Mr. Chairman, this then does conclude our testimony this morning. We appreciate so much the opportunity of being here and the attention you have given us.

May I reiterate again our very strong feeling that the presently promulgated regulations of the Forest Service without the addition of this legislation with the amendments that we have suggested will hinder rather than help access to the national forests and we are interested in improving that access as well as the relationships of our own access situations with regard to private lands within the national forests.

Senator JORDAN. Mr. Chairman, I would like to ask one question of Mr. Orell.

What reason did the Attorney General have for changing these regulations? Who asked for them and what was the reason for that?

Mr. ORELL. Well, Senator Jordan, if memory serves me correctly, the Attorney General's opinion was requested directly by Senator Morse. I think I am making a fair statement when I say that the Forest Service did not request this change in the Attorney General's opinion and was a little dismayed when the Attorney General made the change he did.

Senator METCALF. Mr. Orell, as far as I am concerned, this hearing has taken a rather different twist than I had anticipated. I am going to have to do considerable more study on some of the propositions that you have presented. I frankly didn't anticipate some of the suggestions and amendments that you have come in with, and as the chairman has already said, this is going to mean a more complete record and further study and further development.

I want to compliment you on bringing these matters to our attention and on the thorough way in which you and your panel have presented your side of the case, and certainly you have given us some very challenging statements, series of statements today.

Thank you very much.

Mr. ORELL. Thank you, Mr. Chairman.

Senator METCALF. We have one more witness. I think I can dispose of Dr. Smith in a very few minutes.

Dr. Smith, I have had an opportunity during the course of the hearing to go through your statement and I think perhaps you are as surprised as I at the course this testimony has taken, and if you will pardon me, I suggest that you file your statement with the privilege of commenting on testimony that has been presented by these witnesses and on the attack that has been made on the General Accounting Office and the Attorney General's opinion at some future time because I know that you and other conservation organizations will desire to comment on that in more detail than you have covered in your presentation statement.

STATEMENT OF SPENCER M. SMITH, SECRETARY, CITIZENS COMMITTEE ON NATURAL RESOURCES

Mr. SMITH. Mr. Chairman, I would like the opportunity, too, to greatly expand the statement that I have now filed before the committee, and a number of other conservation organizations which were heard at the time the Secretary of Agriculture held hearings for the

second time, I think, on the regulations that were just signed yesterday. All of the conservation organizations were there present, and all of them, of course, support completely the Attorney General's regulation and also the regulations as suggested by the Secretary at that time.

I think if any of these organizations were aware that this would be essentially the burden of much of the testimony here this morning in regard to S. 1147, they, too, would have been present, and therefore I would like to speak in a sense in their behalf as well as my own organization to have the opportunity to present our case before this committee which is quite different and quite at variance with that presented by the industry, and we certainly would like to have an opportunity to lay this before the committee in their deliberations.

Senator METCALF. It is the desire of this committee to have as much information as possible before we pass on legislation, and it has already been suggested that we are plowing new ground. You heard the chairman suggest further hearings would be necessary and so I would suggest that at that time you and other organizations that you represent be called and in addition to filing a statement for the record be subject to interrogation and cross-examination for our information.

Mr. SMITH. This we would prefer, Mr. Chairman.

Thank you.

Senator METCALF. Thank you.

Then the hearing will be recalled at the will of the Chair. The hearing is now suspended.

(Whereupon, at 1 p.m., the subcommittee was in recess, to reconvene subject to call of the Chair.)

(Additional statements received follow :)

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., June 11, 1963.

In re S. 1147, right-of-way.

HON. JENNINGS W. RANDOLPH,

Chairman, Subcommittee on Public Roads, Senate Public Works Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR RANDOLPH: The American Farm Bureau Federation is very interested in the subject of the above-named bill and the protection of private interests in the development of access roads.

At our annual meeting in Chicago, Ill., on December 14, 1961, a policy which is still in effect, states as follows:

"We favor maintenance of a privately owned, sustained yield forest industry with the assistance of State and Federal Governments, each in its respective role, in essential supplemental services including fire protection, access roads, insect and disease control, and forestry research and education."

The question of access roads is particularly important as we understand the Secretary of Agriculture, at the present time, has no authority to grant permanent rights-of-way across national forest lands.

This bill, S. 1147, would grant such authority and enable the Secretary to enter into reciprocal agreements.

We suggest further every necessary safeguard possible and practical be incorporated into the bill including a provision for review by a court of competent jurisdiction for the establishment of the fair market value of such easements; the right of immediate access upon filing of an application by a private interest and sufficient assurance that all rights of private owners will be properly and justly protected.

Because of the increasing need for access roads for all uses and to implement the Multiple Use Act recently passed by the Congress, we feel that legislation and negotiations on access roads or the rules and regulations covering their operation

and maintenance, both as they affect private owners and public agencies handling these transactions, should be treated on a fully reciprocal and mutually agreeable basis. They should not allow any undue advantage to either.

With these understandings and provisions fully incorporated, we urge the passage of S. 1147.

We would be pleased if you would make this letter a part of the record.

Sincerely,

JOHN I. TAYLOR,
Assistant Legislative Director.

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
June 13, 1963.

Hon. JENNINGS RANDOLPH,
U.S. Senate,
Washington, D.C.

DEAR JENNINGS: I had asked the Forest Service and the Bureau of Public Roads to supply me with certain information on prequalification of contractors and this information has been supplied. I would appreciate having it entered in the hearings on S. 1147.

Sincerely,

Senator METCALF.

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, D.C., June 12, 1963.

Hon. LEE METCALF,
U.S. Senate,
Washington, D.C.

DEAR SENATOR METCALF: This is in response to your verbal request of June 6.

The Forest Service contracts the construction of roads, trails, and other improvements under delegated authority of the Federal Property and Administrative Services Act of 1949, as amended. Under our decentralized system of organization, this authority is exercised by contracting officers in our regional offices and experiment stations.

All contracts in excess of \$2,500 are made after publicly advertising for bids. Each contracting officer maintains a list of bidders known to him by reason of past experience to be interested in Forest Service jobs. Some may be interested only in a single type of work. Others may be interested in several or even many types of work.

When a project is to be advertised, bids are requested from contractors on these bid lists known to be interested in the type of work contemplated. A general notice that bids are being called for is given much wider circulation, is posted in public places, and, in many instances advertised in trade journals, informing contractors how and where bidding documents may be obtained. For special projects it may be necessary to solicit bids only from those contractors known to be qualified and capable of doing the work. This may be done in unusual cases but it is not a standard operating procedure.

As a part of the bidding documents we require bidders to execute and return to us an experience questionnaire, equipment and operating plan, and financial statement. Completion of these forms may be waived in whole or in part for regular bidders having current questionnaires already on file. A bid bond is required for any construction contract exceeding \$2,000.

When bids are opened, tabulated, and the apparent low bidder established, the contracting officer must determine that such bidder is qualified and competent to perform the work to the standard and within the time of the advertised specification. Contracts may not be awarded to the lowest bidder on the basis of price alone. The contract is awarded to the lowest responsible bidder whose offer conforms to all material requirements of the job as advertised. If the apparent

low bidder has satisfactorily performed other contracts for the Forest Service this offers no problem. If he has failed to perform satisfactorily on previous Forest Service contracts the contracting officer may disregard his bid as being that of a nonresponsible bidder. If he is a new and unknown bidder, the contracting officer must conduct whatever investigation he deems necessary to determine whether the bidder is qualified and capable of performing the work. If such investigation shows the bidder to be responsible a contract is awarded. If the investigation shows the bidder lacks the experience, financing or the organization to perform the work his bid is rejected as that of a nonresponsible bidder.

As you know, all Forest Service contracts for construction of a public work in excess of \$2,000 are subject to the Davis-Bacon Act and to the Miller Act. Workmen furnishing labor are therefore guaranteed the wages paid will equal or exceed the rates established for the project by the Department of Labor. Workmen and material men also have the protection of the payment bond to guarantee payment of wages earned, or materials furnished for the contract work.

Before payment can be made to the contractor a qualified Forest Service employee representing the contracting officer, must approve the work as meeting the contract specifications in all respects.

The Forest Service handles a great number of contracts most of them under \$50,000. A wide variety of work is performed under vastly differing physical and climatic conditions. It is only logical that some of these contracts run into trouble. When this occurs we must resolve the problems as provided in the terms of the particular contract. We are happy to advise that comparatively few contractors have been defaulted for unsatisfactory performance.

If any particular cases in the State of Montana have been brought to your attention where these procedures have not been adequately followed, please let us know. We will be very glad to investigate and give you a full report of the facts.

We appreciate your interest in these matters. Please let us know if we can be of further assistance.

Sincerely yours,

EDWARD P. CLIFF,

Chief.

By O. W. GREELEY.

DOES THE U.S. BUREAU OF PUBLIC ROADS PREQUALIFY BIDDERS FOR CONSTRUCTION WORK?

Public Roads does not prequalify bidders in connection with construction work administered by it. It does require of bidders for construction work the submission of certain experience, equipment, and financial data for use investigating the responsibility of the bidder. Public Roads' instructions to its personnel in this matter is contained in section 11 of PPM 25-5, which reads as follows:

"The law provides an opportunity to bid on Government work to any individual, firm, or corporation considering himself or itself as qualified and any such applicant must be furnished with the necessary bidding documents. If the information submitted by the low bidder regarding his finances, equipment or experience creates doubt as to his ability to perform the contract satisfactorily, or if the bid itself by being unbalanced indicates a lack of adequate understanding of the work to be performed or of the contract requirements, or, if the record shows unsatisfactory progress or performance by the bidder on other Federal or Federal-aid work, such may be deemed a sufficient basis for not awarding the contract to such bidder. This determination is to be made by the regional engineer, but the advice of the Washington office may be requested when considered desirable."

Public Roads and any other Government agency can reject a bid submitted by other than a responsible bidder, but it cannot under the law prohibit the submission of bids by prequalification procedures such as are provided by certain State statutes.

There are attached our forms PR-50, PR-51, and PR-52 which are used in investigating the responsibility of bidders.

Form PR-50
(9-23-55)

DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS

STANDARD FORM OF

Contractor's Financial Statement

Approved and recommended by the Joint Conference
on Construction Practices for use in investigating the
qualifications of bidders on public and private construction.

Submitted by.....
Address.....
Date.....

CONTRACTOR'S FINANCIAL STATEMENT

APPROVED AND RECOMMENDED FOR USE BY THE JOINT CONFERENCE ON CONSTRUCTION PRACTICES

Submitted by _____

- ☐ An Individual
☐ A Co-partnership
☐ A Corporation

With principal office at _____

To _____

Condition at close of business _____ 19____

ASSETS

Dollars Cts.

1. Cash: (a) On hand \$ _____, (b) In bank \$ _____, (c) Elsewhere \$ _____
2. Notes receivable (a) Due within 90 days.....
(b) Due after 90 days.....
(c) Past due.....
3. Accounts receivable from completed contracts, exclusive of claims not approved for payment.....
4. Sums earned on uncompleted contracts, as shown by Engineer's or Architect's estimate
(a) Amount receivable after deducting retainage.....
(b) Retainage to date, due upon completion of contracts.....
5. Accounts receivable from sources other than construction contracts.....
6. Deposits for bids or other guarantees: (a) Recoverable within 90 days.....
(b) Recoverable after 90 days.....
7. Interest accrued on loans, securities, etc.....
8. Real estate: (a) Used for business purposes.....
(b) Not used for business purposes.....
9. Stocks and bonds: (a) Listed — present market value.....
(b) Unlisted — present value.....
10. Materials in stock not included in Item 4 (a) For uncompleted contracts (present value)
(b) Other materials (present value).....
11. Equipment, book value.....
12. Furniture and fixtures, book value.....
13. Other assets.....

Total assets.....

LIABILITIES

1. Notes payable: (a) To banks regular.....
(b) To banks for certified checks.....
(c) To others for equipment obligations.....
(d) To others exclusive of equipment obligations.....
2. Accounts payable: (a) Not past due.....
(b) Past due.....
3. Real estate encumbrances.....
4. Other liabilities.....
5. Reserves.....
6. Capital stock paid up: (a) Common.....
(b) Common.....
(c) Preferred.....
(d) Preferred.....
7. Surplus (net worth) Earned \$ _____ Unearned \$ _____

Total liabilities.....

CONTINGENT LIABILITIES

1. Liability on notes receivable, discounted or sold.....
2. Liability on accounts receivable, pledged, assigned or sold.....
3. Liability as bondsman.....
4. Liability as guarantor on contracts or on accounts of others.....
5. Other contingent liabilities.....

Total contingent liabilities.....

DETAILS RELATIVE TO ASSETS				
1	(a) On hand..... \$ _____			
	Cash (b) Deposited in banks named below.....			
	(c) Elsewhere — (state where).....			
Name of bank		Location	Deposit in name of	Amount

2 *	(a) Due within 90 days..... \$ _____				
	Notes receivable (b) Due after 90 days.....				
	(c) Past due.....				
Receivable from name and address		For what	Date of maturity	How secured	Amount
Have any of the above been discounted or sold? _____ If so, state amount, to whom, and reason _____					

3 *	Accounts receivable from completed contracts exclusive of claims not approved for payment \$ _____			
Name and address of owner		Nature of contract	Amount of contract	Amount receivable
Have any of the above been assigned, sold, or pledged? _____ If so, state amount, to whom, and reason _____				

4 *	Sums earned on uncompleted contracts, as shown by engineer's or architect's estimate:						
	(a) Amount receivable after deducting retainage..... \$ _____						
	(b) Retainage to date due upoo completion of contract.....						
Designation of contract and name and address of owner		Amount of contract	Amount earned	Amount received	Retainage		Amount exclusive of retainage
					When due	Amount	
Have any of the above been sold, assigned, or pledged? _____ If so, state amount, to whom, and reason _____							

* List separately each item amounting to 10 percent or more of the total and combine the remainder

Comm-DC-46168

DETAILS RELATIVE TO ASSETS (Continued)

5*	Accounts receivable not from construction contracts \$ _____			
	Receivable from: Name and address	For what	When due	Amount
What amount, if any, is past due \$..... \$ _____				

6	Deposits with bids or otherwise as guarantees \$ _____			
	Deposited with: Name and address	For what	When recoverable	Amount

7	Interest accrued on loans, securities, etc..... \$ _____		
	On what accrued	To be paid when	Amount

8	Real Estate / Book value	(a) Used for business purposes.....	\$ _____	
		(b) Not used for business purposes.....	_____	
	Description of property	Improvements		Total book value
		Nature of improvements	Book value	
	1.			
	2.			
	3.			
	4.			
	5.			
	6.			
7.				
	Location	Held in whose name	Assessed value	Amount of encumbrances
1.				
2.				
3.				
4.				
5.				
6.				
7.				

* List separately each item amounting to 10 percent or more of the total and combine the remainder Form PR-50 (9-22-55)

Comman-DC-46168

DETAILS RELATIVE TO ASSETS (Continued)	
12	Furniture and fixtures at book value..... \$ _____

13	Other assets..... \$ _____
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Description	Amount
Total Assets..... \$ _____	

DETAILS RELATIVE TO LIABILITIES

1	Notes payable {	(a) To banks, regular..... \$ _____
		(b) To banks for certified checks..... \$ _____
		(c) To others for equipment obligations..... \$ _____
		(d) To others exclusive of equipment obligations..... \$ _____

To Whom: Name and address	What security	When due	Amount

2	Accounts payable {	(a) Not past due..... \$ _____
		(b) Past due..... \$ _____

To Whom: Name and address	What security	Date payable	Amount

3	Real estate encumbrances (See Item 8, Assets)..... \$ _____
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4	Other liabilities..... \$ _____
----------	---------------------------------

Description	Amount

5	Reserves..... \$ _____
----------	------------------------

Interest	Insurance	Bldgs. & Fixt.	Plant Depr.	Taxes	Bad Debts		
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

6	Capital stock paid up {	(a) Common..... \$ _____
		(b) Preferred..... \$ _____

7	Surplus: \$ _____
----------	-------------------

Total Liabilities..... \$ _____

<div>If a corporation, answer this:</div> <div>Capital paid in cash, \$ _____</div> <div>When incorporated _____</div> <div>In what State _____</div> <div>President's name _____</div> <div>Vice-President's name _____</div> <div>Secretary's name _____</div> <div>Treasurer's name _____</div>	<div>If a co-partnership, answer this:</div> <div>Date of organization _____</div> <div>State whether partnership is general, limited or association _____</div> <table><tr><td>Name and address of partners:</td><td>Age</td></tr><tr><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td></tr></table>	Name and address of partners:	Age	_____	_____	_____	_____	_____	_____
Name and address of partners:	Age								
_____	_____								
_____	_____								
_____	_____								

The undersigned hereby declares: that the foregoing is a true statement of the financial condition of the individual, co-partnership or corporation herein first named, as of the date herein first given; that this statement is for the express purpose of inducing the party to whom it is submitted to award the submittor a contract; and that any depository, vendor or other agency herein named is hereby authorized to supply such party with any information necessary to verify this statement.

NOTE: A co-partnership must give firm name and signatures of all partners. A corporation must give full corporate name, signature of official and affix corporate seal.

Affidavit for Individual

STATE OF _____ }
COUNTY OF _____ } ss.: _____

_____ being duly sworn, deposes and says that the foregoing financial statement, taken from his books, is a true and accurate statement of his financial condition as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 19____ (Applicant must also sign here)

Notary Public

Affidavit for Co-partnership

STATE OF _____ }
COUNTY OF _____ } ss.: _____

_____ being duly sworn, deposes and says that he is a member of the firm of _____; that he is familiar with the books of the said firm showing its financial condition; that the foregoing financial statement, taken from the books of the said firm, is a true and accurate statement of the financial condition of the said firm as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 19____ (Members of firm must also sign here)

Notary Public

Affidavit for Corporation

STATE OF _____ }
COUNTY OF _____ } ss.: _____

_____ being duly sworn, deposes and says that he is _____ of the _____ the corporation described in and which executed the foregoing statement; that he is familiar with the books of the said corporation showing its financial condition; that the foregoing financial statement, taken from the books of the said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 19____ (Officer must also sign here)

Notary Public

Form PR-51
(8-29-55)

U. S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS

PLAN AND EQUIPMENT QUESTIONNAIRE

FOR ENGINEERING CONSTRUCTION

Approved and recommended by the Joint
Conference on Construction Practices for
use in investigating the qualifications of
bidders with respect to a specific project.

Project _____

Location _____

Date of Letting _____

Submitted by _____

Address _____

6. Do you intend to do the grading on the proposed work with your own forces? _____
If so, give type of equipment to be used _____

7. If you intend to sublet the grading or perform it through an agent, state amount of sub-contract or agent's contract, and, if known, the name and address of sub-contractor or agent, amount and type of his equipment and financial responsibility _____

8. Do you intend to sublet any other portions of the work? _____
If so, state amount of sub-contract, and if known, the name and address of the sub-contractor, amount and type of his equipment and financial responsibility _____

9. From which sub-contractors or agents do you expect to require a bond? _____

10. What equipment do you own that is available for the proposed work? _____

[illegible]

11. What equipment do you intend to purchase for use on the proposed work, should the contract be awarded to you?

Quantity	Item	Description, Size, Capacity, Etc.	Approximate Cost

12. How and when will you pay for the equipment to be purchased? _____

13. Do you propose to rent any equipment for this work? _____
If so, state type, quantity and reasons for renting. _____

14. Have you made contracts or received firm offers for all materials within prices used in preparing your proposal? Do not give name of dealers or manufacturers. _____

Dated at _____ this _____ day of _____
_____ 19 _____

Name of Organization

By _____

Title of Person Signing

STATE OF _____ }
COUNTY OF _____ } SS:

_____ being duly sworn deposes and says that he
is _____ of the above _____

Name of Organization

and that the answers to the foregoing questions and all statements therein
contained are true and correct.

Sworn to before me this

_____ day of _____ 19 _____

Notary Public

My commission expires _____

FOREST DEVELOPMENT ROADS AND TRAILS

WEDNESDAY, JULY 31, 1963

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC ROADS OF THE
COMMITTEE ON PUBLIC WORKS,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:08 a.m., in room 4200, New Senate Office Building, Senator Jennings Randolph presiding.

Present: Senators Randolph, Metcalf, Jordan, Cooper, and Fong.

Also present: Richard E. Gerrish, assistant chief clerk, and Richard B. Royce, professional staff member.

Senator RANDOLPH. This hearing on S. 1147 is a resumption of the hearing held on June 11, 1963. At that time we listened to Forest Service witnesses from the Department of Agriculture and we also heard witnesses from the forest products industry who are intensely desirous, I believe, of arriving at certain clarifications with reference to pending legislation.

Today we resume with the Forest Service comments on the amendments that were suggested by the industry witnesses. And we will also, in this hearing, be privileged to receive testimony from conservation groups.

I think it is fair to say that everyone involved recognizes that roads are essential to forest management regardless of the ownership of the forest.

Now, the objectives of S. 1147 are to provide for the construction, for the use, and for the maintenance of forest roads in national forest areas. Of particular concern are those areas where there is an intermingling of private ownership with public or Federal ownership.

I think that there is—I hope there is—substantial agreement on this bill, and I hope that our subcommittee can help to resolve any questions that may exist.

It is my understanding that the Department of Agriculture officials met for 2 days with the representatives of the timber industry, after which the industry representatives met with representatives of conservation groups. I hope that all groups have tried to understand the problems and concerns of the others involved. The industry has understandably suggested some alternatives to the additions to the bill included in the testimony given by the industry on June 11 by Mr. Orell.

It will be helpful to have comments on these changes by witnesses testifying today.

Mr. Nelson and Mr. Florance are witnesses for the Forest Service and questions addressed to Mr. Florance in advance of our hearing

today in writing will, I am sure, receive his attention. We are pleased to have him make such further remarks as he believes will be helpful.

Mr. Florance, if you will come forward, and I believe Mr. Nelson, Deputy Chief of the Forest Service, is with you. Please introduce any others that I failed to mention who will be accompanying you.

Mr. FLORANCE. Mr. Chairman, we also have with us Mr. Ralph Koebel. He is Assistant General Counsel for the Department of Agriculture.

TESTIMONY OF REYNOLDS FLORANCE, DIRECTOR, DIVISION OF LEGISLATIVE REPORTING AND LIAISON, FOREST SERVICE, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY M. M. NELSON, DEPUTY CHIEF, FOREST SERVICE; AND RALPH KOEBEL, ASSISTANT GENERAL COUNSEL

Senator RANDOLPH. If you will proceed, sir.

Mr. FLORANCE. Mr. Chairman, in response to your request the Department has submitted its views under date of July 30, 1963, signed by the Acting Secretary Murphy. It comments on the proposed amendments included in Mr. Orell's statement presented to the committee in the former hearing.

I believe the committee has copies of the Department's report and I doubt that it is necessary for us to read the report because I am sure it will speak for itself to the members of the committee.

As the chairman has indicated, a meeting was set up with attorneys representing some of the industry segments, which was also attended by other representatives from the National Lumber Manufacturers Association and a member of the staff of the committee.

We met for 2 days and discussed at the outset legal interpretations, which discussion was carried forward by attorneys in the Department led by Mr. Koebel. Members of the Forest Service were also there to respond in connection with any of the administrative matters.

At the conclusion of the discussion of the legal points involved, the discussion turned to the suggested amendments recommended by Mr. Orell. At that time the Department's position had not yet been established on the suggested amendments but we were able to indicate to the participants in that discussion that the Department's views basically were that any amendments which would tend to restrict the discretionary authority which the Secretary of Agriculture has in connection with the granting of easements or permission to construct roads across the national forests, as interpreted by the Attorney General in his opinion of February 1, 1962, would not be looked upon with favor.

That, of course, is the position that was expressed in the Department's report to the committee and it was with that thought in mind that we basically have recommended that the amendments not be adopted.

There was included in the Department's report a suggested revision of one section of the bill to which I would like to call the committee's attention, and that was the recommended amendment to section 4 in

which the proviso, according to the Department's recommendation, would be amended to read as follows:

Provided, That where roads of a higher standard than that needed in harvesting and removal of timber and other products covered by the particular sale are to be constructed, the purchaser of the national forest timber and other products shall not be required to bear that part of the cost necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate.

Now, Mr. Chairman, we will be happy to attempt to answer any questions that the committee may have.

(The comments referred to are as follows:)

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 30, 1963.

HON. JENNINGS RANDOLPH,
*Chairman, Subcommittee on Public Roads,
Committee on Public Works, U.S. Senate.*

DEAR SENATOR RANDOLPH: This is in response to your request of July 1, 1963, for a report from this Department on amendments to S. 1147, which were proposed by Mr. Bernard L. Orell on behalf of the National Lumber Manufacturers Association at the hearing conducted by your subcommittee on June 11, 1963. Six proposed amendments were discussed and specific language was recommended on four of these. In setting forth the position of the association the statement discussed in considerable detail the Attorney General's opinion of February 1, 1962, decisions of the Comptroller General in 1960, 1961, and 1962, and this Department's recently issued road regulations. None of the points covered in these is presented by the language in S. 1147. These points are involved in the consideration of this bill only by the introduction of the industry-recommended amendments.

The Attorney General's opinion dealt primarily with the question of whether owners of lands within the national forests reserved from the public domain, other than actual settlers, have the right to construct roads across such national forest lands for ingress to and egress from their land, and whether, in granting rights or permission to construct roads across such national forest lands under their discretionary authority, the Secretaries of the Interior and Agriculture may require the applicant to grant to the United States reciprocal rights it needs across the applicant's lands.

The recently issued road regulations are designed to implement existing authorities of the Secretary of Agriculture and the Secretary of the Interior in the light of the interpretations thereof. It would be our intent, however, to apply the principles of these regulations in the exercise of the authority S. 1147 would give to the Secretary of Agriculture to grant road easements across national forest lands—authority which the Secretary of Agriculture does not now have and which does not exist in either Secretary with respect to acquired national forest land. The acquired national forest land is commonly referred to as Weeks law land and is generally situated in the East.

We do not believe that S. 1147 should be amended in such a way as to restrict or modify the Attorney General's opinion.

We will comment on the proposed amendments in the order in which they are set forth in Mr. Orell's statement.

1. The first recommends the addition of a sentence at the end of section 2 which would read as follows:

"Such grant may be conditioned upon a valuable consideration not to exceed the fair market value of the easement granted."

In explaining the reason for this proposal, reference is made to a situation where a timberland owner would need a bare land right-of-way of several hundred yards across national forest land and the Forest Service would need an easement across many miles of the applicant's land. The statement explains, "In practical operation this addition would mean that if the Forest Service sought a greater right from the applicant than the applicant sought from the Federal Government, the Forest Service would have to acquire that right by negotiation or condemnation and not by withholding access from the applicant."

In situations where the value of the right needed by the Government exceeds the value of the right sought by an applicant, we believe it is only fair and

proper that the difference in value be paid to the applicant. In developing the recently issued road regulations we construed the Attorney General's opinion as recognizing that the requirements for the granting of reciprocal rights should not be unreasonable.

We are in agreement with the principle of this proposed amendment. Section 212.10(a) of the regulations provides that where the values of the interests needed by the United States exceed those applied for by the applicant, the additional interests required by the United States will be acquired by negotiation or condemnation.

We believe, however, that to incorporate this proposed amendment in statute could properly be considered as unnecessarily restricting the Attorney General's opinion. Therefore we do not recommend the adoption of this amendment.

2 and 3. The second recommended amendment would add to section 2 the following paragraph:

"The Secretary shall promptly grant to an applicant for an easement permission to cross national forest lands to his own land under such terms and conditions as will protect the rights of the Government and its assigns to use the road built across Government lands upon assuming a proportionate share of the construction thereof."

The third recommended amendment is related to the second and would add to section 2 an additional paragraph as follows:

"Any person who, pursuant to permission granted by appropriate authority, has placed an improvement on national forest or other lands administered by the Forest Service shall be deemed to have a compensable interest in such improvement."

Our policy under the road regulations is to afford prompt access to those who must cross national forest lands to reach their own. This is in accord with the regulations. Where an application is made for an easement, and negotiations would extend over a considerable period to develop agreement on the terms and conditions under which an easement would be granted, provision is made for the applicant to have prompt use of the needed access pending final agreement. Where the negotiations lead to agreement the applicant would be granted an easement under terms in accordance with the negotiations and prior agreement which would enable him to recapture proportionate shares of the construction in the event of use of the road by others who had not shared in the construction.

One of the basic things S. 1147 would authorize the Secretary to do would be to grant easements for road rights-of-way. The easements which would be granted by the Secretary under this authority would give to the grantee a right for which he would have to be compensated if that right were taken away from him. Therefore, any applicant who met the requirements as to the granting of reciprocal rights needed by the Government and who made cooperative or other arrangements to qualify himself for an easement would obtain what would amount to a compensable right.

The second and third amendments recommended by the National Lumber Manufacturers Association would amount to a statutory guarantee of the right of the ingress and egress, with an assurance of having a compensable interest in the right-of-way without regard to whether the applicant had provided the Government with the reciprocal rights which it needs or otherwise qualified for the grant of an easement.

The third amendment is expressed in such broad language as to apply to any person who had placed any improvement upon national forest land for any purpose, even though the improvement was placed there under a revocable permit instead of a permit or easement for a specified period of years or in perpetuity.

The purpose of the second recommended amendment, which would be reinforced by the third recommended amendment, is indicated by Mr. Orell's statement to be to substantially modify the effect of the Attorney General's opinion. This Department recommends that these amendments not be adopted.

4. The fourth amendment is to the effect that if there is disagreement between the owner of the intermingled private lands who is applying to the Forest Service for a road easement across national forest land and from whom the Forest Service is seeking to obtain a road easement as to the values of the respective property rights, the U.S. district courts be authorized to determine the fair market value of the easements. No specific language is recommended to accomplish this.

We understand and that there is a serious question as to whether such a determination would properly be a judicial act to be performed by the U.S. district courts and therefore do not recommend its adoption.

5. The fifth recommended amendment would modify the proviso at the end of section 4 to read as follows:

"Provided, That where roads of a higher standard than that needed in a particular sale in the harvesting and removal of the timber and other products from lands tributary thereto are to be constructed, the purchasers of national forest timber and other products shall be required neither to construct that part of the road necessary to meet such higher standard nor to bear any of the cost thereof, and the Secretary is authorized to make such arrangements to this end as may be appropriate."

The question involved in this recommended amendment is (a) whether the Secretary should have authority to require purchasers of national forest timber to construct "maximum economy" roads—that is, roads which will permit maximum economy in harvesting timber from national forest lands tributary to the road and at the same time meet the requirements for protection, development, and management of the tributary national forest lands, and for the utilization of the other resources thereof, or (b) whether the Secretary should be limited to what is his present authority to require purchasers of national forest timber to build only what are known as "prudent operator" roads—that is, roads only to the standard necessary for the operation of the particular timber sale in connection with which the road is built.

We believe we should have authority to require the construction of maximum economy roads and recommend that this amendment not be adopted.

Concern is expressed particularly that small operators would be required to build roads to standards that would exceed their road construction capacity.

Several courses of action are open to a purchaser of national forest timber as to the manner in which the related road construction may be accomplished. The purchaser may construct the road himself. He may contract with a road constructing firm. He may, under the provisions of the act of March 3, 1925, as amended by the act of April 24, 1950 (16 U.S.C. 572), request the Forest Service to perform the road construction work with funds the purchaser would deposit with the Forest Service. We believe this last course, in particular, should be fully recognized as a means of assurance to any prospective timber purchasers that requirements for the construction of maximum economy roads would not place upon them undue burdens beyond their road construction capacities. Full assurance may be obtained by prospective bidders for any timber offering before bids are submitted.

The intent and purpose of the proviso in section 4 are to assure that national forest timber will not pay any part of the road costs beyond that necessary to harvest the national forest timber. We believe this can be worded to make it clear that requirements of timber purchasers to construct maximum economy roads could not have the effect of reducing the 25 percent of national forest receipts paid annually to the States to be expended for roads and schools for the benefit of counties in which national forests are located. We, therefore, recommend that the proviso be amended to read as follows:

"Provided, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate."

6. The sixth recommended amendment would deal with the distribution of the road reconstruction costs. No specific language is recommended but it is indicated that the purpose of the proposal would be to have reconstruction costs in most cases proportioned among all users, in the same manner as would the costs of maintenance.

Maintenance is a recurring job and it can be prorated to use. Reconstruction, however, is in many cases a different thing. A road may be serving its present uses adequately, but without any surplus capacity. If an application is received for permission to use this road, the additional use might require a certain amount of reconstruction. Such reconstruction would not be necessary without this additional use. In this circumstance we believe it is only reasonable that the person seeking to make the additional use should bear the entire cost of the reconstruction which his use makes necessary. The present language of section 6 of S. 1147 would permit this. But if the cost of the reconstruction which the additional use made necessary were required to be prorated among all users, those users whose present needs are being fully met without the recon-

struction would be required to bear a proportionate part of the reconstruction costs.

We recognize, however, that if there should be two or more applicants for permission to make additional use of an existing road the reconstruction costs made necessary by such additional use should be prorated among the several applicants. Also if road reconstruction becomes necessary in order to continue present use by two or more users the cost of such reconstruction should be shared by such users in proper proportion. This would be the result under the present language of section 6.

We recommend that this amendment not be adopted.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

CHARLES MURPHY,

Acting Secretary.

Senator RANDOLPH. Thank you very much, Mr. Florance, for your statement and for your attention to the contents of the Department of Agriculture's reply to my request of July 1 which was answered on July 30.

Mr. Florance, I understand that the Attorney General's opinion permits the Forest Service to condition a grant of access across national forest land on the receipt of the reciprocal right of access from the applicant.

Is this true?

Mr. FLORANCE. That is our understanding of the Attorney General's opinion.

Senator RANDOLPH. A request by the Forest Service, Mr. Florance, for this reciprocal right is discretionary rather than required under the opinion. Is that true?

Mr. FLORANCE. That is correct.

Senator RANDOLPH. Now, the opinion does not constitute, then, a directive to the Department to make such a request, is that true?

Mr. FLORANCE. No, sir. It is not a directive to the Department. It calls attention to the Department's authority and in the exercise of that authority, the Department, of course, would undertake to do what in its judgment is in the public interest.

Senator RANDOLPH. Then it is not the policy of the Forest Service, I am sure, to ask for reciprocal right in all cases, is that true?

Mr. FLORANCE. Where there is a need by the Government for reciprocal rights, then such request would be made.

Senator RANDOLPH. If the Forest Service decides, Mr. Florance, to require that reciprocal access right, will the reciprocal right be of substantially similar value to the right applied for a private owner? This is a condition, of course, in section 212, 10(a), of the regulation. Is that true?

Mr. FLORANCE. The regulations make such provision and that is that the right which would be demanded or required of an applicant for an easement would be substantially equivalent to the value of the right sought by the applicant.

Senator RANDOLPH. Mr. Florance, to go further, I think we might come to a situation where the Forest Service may ask for a reciprocal grant which would exceed the value of the right applied for by the private owners? Is this possible?

Mr. FLORANCE. Oh, yes; that would be true in a number of cases.

Senator RANDOLPH. Then it is contemplated that the Forest Serv-

ice may ask for access right which would exceed perhaps substantially the right for which application was made.

Mr. FLORANCE. Where the right needed by the Forest Service exceeds in value the right or easement that is applied for, the regulations provide that the right required to be granted by the applicant by way of reciprocity for the right which he is seeking would be of substantially equal value and that the additional right which is needed by the Government would be sought by negotiation or obtained through condemnation.

Now, the practical application of this would be that if an applicant came in for an easement and if the Government needed rights that were in excess of the value of the rights sought, the Forest Service would begin by undertaking to negotiate for the whole package, but as far as the requirement for the grant in reciprocity under the regulations for the requirement would be that a right of substantially equal value would be required.

Senator RANDOLPH. Is there anything within the regulations that would restrict the Forest Service from asking for what I will designate as a greatly disproportionate access right?

Now, I think I should give an example. If an applicant asked for a bare land easement of, let us say, a few hundred yards, could not the Forest Service use such application as a basis for asking for reciprocal grant of the full use of an extensive road system?

Mr. NELSON. Well, as Mr. Florance indicated, we would start off by negotiating for what we need and if the value of what we need far exceeds the value of what they need, as you have indicated, then we would negotiate toward an equitable settlement on that basis and we would pay the difference either in one of two ways. We would pay for it in cash, as we have in a number of cases. Or we could pay for it through an arrangement and agreement whereby the owner of the road we are negotiating for could collect from the timber, national forest timber that is hauled over that road.

Senator RANDOLPH. Mr. Nelson, do I understand, then, that your policy is to ask for no more than substantially equal access rights in return?

Mr. NELSON. Our policy is to negotiate for what we need, what the public needs, in these cases. Our policy also is that what we give will be of substantially equal value to what we get. We are willing to pay for the difference.

Senator RANDOLPH. Would you say, Mr. Nelson, then, that perhaps we could incorporate an amendment in Senate bill 1147 which would limit the reciprocal demand to substantially similar value and that such an amendment would therefore be in accord with the policy of the Department?

Mr. NELSON. In principle we are in agreement that we will not ask for more in value than substantially what we get. Putting it into a statutory situation we don't believe is needed at this time. After all, these regulation were only put into effect on June 10. We have been doing some negotiations based upon the Attorney General's decision for the past year. We have been quite successful. We have negotiated a number, some 42 in the past year and a half, of cases. We would feel that the regulations as now drafted ought to have an opportunity to see how they work out for perhaps at least a year.

We would be perfectly willing and intend to put the whole subject before the Secretary's multiple-use advisory board after they have had time to be worked out and see how they operate.

At that time, if it appears that legislation is needed, I am sure the Department would be perfectly willing to recommend such legislation and send it up.

Senator RANDOLPH. Mr. Nelson, of course the legislation pending in the subcommittee came as a request from the Forest Service.

Mr. NELSON. Yes.

Senator RANDOLPH. So naturally you have an interest in this type of legislation.

Mr. NELSON. We have a great interest in the legislation sent up. I was referring only to the amendment.

Senator RANDOLPH. Yes, I understand.

Mr. NELSON. It would have an effect upon the Attorney General's—

Senator RANDOLPH. I think we must all realize that as a practical matter amendments are often included in legislation and refinements of the bill often can be made such as we are discussing here this morning.

Mr. NELSON. We agree with that.

Senator JORDAN. Mr. Chairman, may I ask a question in that regard?

Senator RANDOLPH. Yes, Senator Jordan.

Senator JORDAN. I wonder why the Department would object to having such a provision in the bill rather than wait and see how your regulations work out. I am thinking of the property owner with whom you have negotiated. He doesn't have anything to go by. **You have the regulation.** That is your regulation. He has nothing to defend him at all unless he has a law to that effect. And why would you—if that is your intention, why would you object to having it written into the law?

Mr. NELSON. I didn't mean to say that we would necessarily object to it. We agree in principle. We have felt that it might be a little better to give these regulations an opportunity to see how they work out and it might be a little premature is all I am saying.

Senator JORDAN. Well, the only thing I was thinking, if we are going to write a law, let's put everything we intend to in the law instead of seeing later on how matters work out.

Mr. NELSON. Our position has really been that this law or bill as sent up was a rather clean bill and had no particular bearing upon the Attorney General's decision and the amendments that have been suggested seem to bring in or have a bearing upon putting a limitation on the Attorney General's decision if you take all three of them together.

Senator RANDOLPH. What prior statutes, Mr. Nelson, provide the basis for the promulgation of the regulations which were instituted on June 10?

Mr. FLORANCE. Those regulations were based mainly on the act of June 4, 1897, which authorizes the Secretary to issue rules and regulations governing the use and occupancy of the national forests.

Senator RANDOLPH. Senator Metcalf?

Senator METCALF. I'm sorry I came in late. We were creating some national parks over in Interior.

I am not quite clear about transfer of money and I am not quite clear about the exact reciprocity. Now, is it on the basis of mileage or value or how do you figure the approximate reciprocal amount taken from a landowner in proportion to what you want? What is reciprocity? How is it worked out?

Mr. NELSON. Well, I guess I would have to say it is basically substantially equal value.

Senator METCALF. Equal value.

Mr. NELSON. Yes. There are certain things about a road. It might not be the value of the land but the value of the road system, a portion of it in hauling the amount of timber that is coming out over the road.

When we get to working on one of these agreements, we look at the amount of merchandisable timber that is left to come out over that road system and it is worked out, if we have 50 percent and the landowner has 50 percent, there is a 50-50 deal worked out there. So I would say basically when we are talking about reciprocity or equal—based upon a value rather than mileage, not necessarily a mile for a mile but 1 mile might be more valuable than another mile.

Senator METCALF. Then if there were statutory requirement that Government, or the Forest Service, could take hold of an equal amount, or demand an equal amount, you might be left there dangling with an inadequate mileage to take care of the amount of timber that you want to take care of or inadequate mileage to get through your area, might you not?

Mr. NELSON. That is very true, Senator. You see, a lot of the road systems are built—that we are negotiating for now on private land, are out in front on national forest timber. If there was a quarter of a mile left on the upper end of that road and we exchanged only for the next quarter of a mile of road and there were still 10 miles, the private land owner would still have control of the road unless we are able to arrive at some type of agreement or condemn it. So we might exchange those two quarter mile sections but our timber would still be blocked unless we condemned the remaining 10 miles.

Senator METCALF. You were talking about this provision on page 3 where the purchasers of timber are not required to bear the costs necessary to meet higher standard roads. That would be roads that the Forest Service would determine had to be built to a higher standard for the public interest, multiple use, than would require for removal of the timber. How do you pay that extra cost?

Mr. NELSON. What you are referring to now, I believe, is section 4 which is a little different section.

Senator METCALF. Yes. Section 4 in the bill.

Mr. NELSON. If we required the purchaser of a national forest timber sale to build a road to a higher standard than the prudent operator theory would require, we would pay for that out of appropriated funds.

Senator METCALF. Out of appropriated funds. There wouldn't be any discount on the sale or anything of that sort?

Mr. NELSON. No. Only up to the amount of money that would be required under the prudent operator theory. In other words, the

minimum road the prudent operator would build to get out that particular sale, the cost of that would be the amount he would spend to build the road to the additional standard. The Government would pay for the additional out of appropriated funds. His costs incidentally would be—they are charged against the timber. It isn't something out of his pocket necessarily. He pays less for that timber on that particular sale for the cost that he puts into the road. I am sure you understand that.

Senator METCALF. Yes. Couldn't such a thing, such an arrangement, be made when you want more than reciprocity would require? Do you need a greater value or greater mileage than somebody who is applying? Can't you work—couldn't you work something out in negotiations in the same way?

Mr. FLORANCE. Senator, I believe the question of the reciprocity requirements relates to a little different situation than the prudent operator principle.

Senator METCALF. It seems to me it relates to unequal values.

Mr. FLORANCE. It does.

Senator METCALF. Yes.

Mr. FLORANCE. The prudent operator question comes in where there is a sale of national forest timber and the purchaser of that timber must build a road in connection with the sale. The reciprocity comes in when the private timberland owner applies to the Government for an easement across the national forest lands. He may not be purchasing national forest timber, at least at the time.

Senator METCALF. You say to him, we will give you such an easement providing you give us an equivalent easement across your land so that we can get into our timber; is that correct?

Mr. FLORANCE. That is correct.

Senator METCALF. And you are permitted to do that by the terms of the Attorney General's opinion?

Mr. FLORANCE. That is correct.

Senator METCALF. Now, the question is whether we should put into—write into statute that you can only go that far but you can't require greater reciprocity. Now, isn't it the policy of the Forest Service to work these things out on a more flexible basis just the same as you work what seemed to me, maybe it isn't, an analogous situation where greater values were involved?

Mr. FLORANCE. We hope to be able to do so.

Senator METCALF. And it would be, you feel, that regulations can be formulated that are more flexible than the strict statute which makes it conform to statutory requirements.

Mr. FLORANCE. That is correct. We feel that to write such a restriction in the statute would, of course, tend to freeze it at least until such time as that statute is modified. Now, to do so, we feel, could properly be considered as a restriction upon the effectiveness of the Attorney General's opinion and the discretion which, according to that opinion, he says is in the Secretary of Agriculture.

Senator METCALF. Now, there is another point on which I am not clear, and that is when you give a permit. Will you explain that to me? When you don't arrive at an agreement or even a reciprocal agreement but there is an applicant for an easement across land and you give a permit; what happens then?

Mr. NELSON. I presume, Senator, you are referring to a permit in a case where we do have need for reciprocity.

Senator METCALF. Well, I am not sure.

Mr. NELSON. Well, let me cover that. Will that be all right?

Senator METCALF. I was asking about the use of permits in the regulations. Yes, you cover it in your own way.

Mr. NELSON. Well, a permit that we give is a revokable permit that the Forest Service has authority to give at the present time.

Under the permits, the permittee does not get a compensable interest in the road. We retain the right to use the road. The road has to be constructed in accordance with terms of the permit to protect forest land from erosion and that type of thing. We do insist upon being in agreement on where the road would be located.

For instance, we don't want a road located down close to a stream that is going to put silt in a stream and be detrimental to fish.

Senator METCALF. Neither do I.

Mr. NELSON. I am sure you don't.

Senator METCALF. This committee has achieved quite a victory with the new regulations in the Bureau of Public Roads on roads near streams.

Mr. NELSON. In the case of a permit which is given in the case where we are working with an operator and need reciprocity, we have said, in the regulations, that we will not hold up that operator if he has need or immediate need to get his road built, we will not hold him up while we are negotiating for the rest of the reciprocity, and that gets pretty complicated sometimes, and sometimes those negotiations might take a year or so. We recognize that.

We say that we will give him a permit. We do—if he wants to qualify for an easement, Interior easement at the present time, we say that he should enter into an agreement with us which indicates his willingness and his intent to work out reciprocity. With that agreement we have worked out a simple agreement to that effect.

He can get a special use permit and it can later then be changed into an easement, under the present situation an Interior easement. If this bill were passed, we would be able to give him an agriculture easement. In that case, his full rights are protected. He would have a compensable interest in the road and that road section would become a part of the overall agreement involving reciprocity.

In the event that he did not enter into the agreement involving reciprocity, share costing, and so forth, we would then—the permit would be an ordinary revokable permit under which he would not have compensable interest.

Senator METCALF. Then the difference is the compensable interest.

Mr. NELSON. That is one of the big differences.

Senator METCALF. And the compensable interest is a lever that you have to require the operator to enter into a reciprocity agreement—

Mr. NELSON. Yes.

Senator METCALF. With you, Forest Service.

I believe those are all the questions. I may have some more as it develops, Mr. Chairman, but thank you.

Senator RANDOLPH. Thank you, Senator Metcalf.

Senator COOPER?

Senator COOPER. Thank you, Senator Randolph.

I will try to be brief. May I ask what authority the Forest Service possessed to grant easements over national forest land, prior to either Opinion 88 in 1960, the regulations, or the opinion of the Attorney General in February 1962?

Mr. FLORANCE. Senator Cooper, the Department of Agriculture has no authority to grant an easement for roads across national forest lands. All we can issue at the present time is a permit. At the present time there can be obtained over those national forest lands reserved from the public domain, an easement from the Secretary of the Interior, but no easement can be granted by the Secretary of Agriculture over the so-called public domain national forests and no easements can be granted by either Secretary over the acquired national forest lands which are generally referred to as Weeks' Law lands.

Senator COOPER. Is it correct to say, then, that prior to these opinions, the Department of Agriculture had no authority to grant an easement over national forest lands?

Mr. FLORANCE. That is correct, and that is situation still today.

Senator COOPER. What is the basis of its lack of authority to grant an easement? Was it based on some legislative enactment?

Mr. FLORANCE. It is based on the absence of legislative authority.

Senator COOPER. Then, prior to these opinions and since, the authority of the Department has been only to grant permits across lands.

Mr. FLORANCE. That is correct, for roads.

Senator COOPER. Was it conceded that owners of property within the boundaries of forest land, could have access to those lands—their own lands—across forest land?

Mr. FLORANCE. That had been the interpretation of the Department of Agriculture of the provision in the act of June 4, 1897, which provides for actual settlers to have rights of ingress and egress to their properties.

Senator COOPER. Does the act say "actual settlers"?

Mr. FLORANCE. Yes.

Senator COOPER. That actual settlers had the right of egress and ingress to their property.

Mr. FLORANCE. That is correct.

Senator COOPER. Then the opinion held that such persons or property owners were not actual settlers unless they lived upon the land. Is that correct?

Mr. KOEBEL. Senator, I think that is essentially correct. The opinion held that actual settlers didn't fully define the term actual settlers but by reference to decisions declared that it was intended to apply to individuals, and I think the opinion by clear implication indicates that it was not intended to apply to corporations and—

Senator COOPER. Did the opinion cover this situation: Assume that a property owner within a national forest boundary had a road which passed through forest land—a road which might have been there before the Forest Service acquired the forest land. Would this opinion go so far as to say that that property owner had no rights or right-of-way of some kind which it enjoyed even prior to the acquisition of the land by the Forest Service?

Mr. KOEBEL. Well, I don't think the opinion goes that far, Senator.

Senator COOPER. Do you think that right could be denied?

Mr. KOEBEL. Well, of course, as Mr. Florance has pointed out, the opinion did not deal with rights to acquire the land, only public domain, but I think I could answer you this way, that the opinion was attacking the problem as to whether our Department's construction of the 1897 law was correct, that all persons owning property within the boundaries of public domain national forests had the statutory ingress and egress, and the opinion in essence holds that that is not true as to any persons except actual settlers, and then in order to reach his conclusion——

Senator COOPER. I don't want to interrupt you but I am concerned about a different situation. I am talking about the cases, and there might not be many but I am sure there are some, where a person owned land now surrounded by Forest Service national forests, and that person owned his land before the Forest Service acquired land.

Did that opinion attempt to hold that that person had lost whatever rights he had?

Mr. KOEBEL. No, Senator.

Senator COOPER. In easements?

Mr. KOEBEL. If that person were within the definition of actual settlers, and had owned his lands before the forest was reserved, his rights would not be disturbed.

Senator COOPER. You are still saying the actual settler is some person who lives on the land within the terms of the opinion of 1962. Now, I would certainly like to have more knowledge upon that. I don't think the Government can take away the easement that someone owned except by the means provided by law.

Mr. KOEBEL. I think you are essentially correct, Senator. The Attorney General did not attempt to say that a person who was an actual settler could be subjected to reciprocation by the Forest Service rules.

Senator JORDAN. Would the Senator yield?

Senator COOPER. Yes.

Senator JORDAN. When you say an actual settler, in other words, that would indicate to me that if a man lived in town and he owned a piece of land back in the forest, that he couldn't go and get his timber out?

Mr. KOEBEL. Well, the regulations protect actual settlers and I don't think this reciprocation would be applied to an actual settler.

Senator JORDAN. What rights would a man have if he owned a body of land surrounded by, or had to go through some national forest land to get to it. What right would he have or what recourse would he have to force you, that is, Forest Service, to give him access into his land? Everybody has a right to get to his own land under the old interpretation ever since this country has been in business.

Mr. KOEBEL. If this is ownership within a national forest and reserved public domain land, this actual settler would not be subjected to reciprocation, and our regulations recognize that. The actual settler has statutory right of ingress and egress to his land.

Senator JORDAN. Suppose he is not an actual settler, though. In other words, a corporation; big paper companies, for instance, own tremendous tracts of timber all over this country. And it may be that they have to go through some forest lands to get into that. Now what can you do to prevent them from doing it? What right have you got?

Mr. KOEBEL. Under the Attorney General's opinion, Senator, as we interpret it, the Department has the discretion to provide for reciprocity, in other words, to seek comparable value as the regulations provide. The opinion implies more than that but that is what our regulations have applied to. To condition their right to cross the forest lands or condition their use of the forest lands on a comparable value.

Mr. NELSON. Senator, the fact that this piece of land is surrounded by national forest land doesn't make it any different than if it was surrounded by other private land, and he wanted to go back and log his timber. He would have to get an easement or right-of-way or permit to cross this land in order to get to his own land.

Senator JORDAN. Yes, I understand that, even if it was private property. You couldn't just use a man's fields unless you received some permit from him or made some contract with him. But suppose—what I am thinking about, is the fact that a man—has to get into his timber. You all say, well, we don't want to let you go in there. We are not going to give you a permit. What can he do about it?

Mr. KOEBEL. Well, the regulations provide him with a permit in the event there was no negotiated agreement between the Forest Service and the timber owner. He would be granted a permit. The regulations so provide.

Senator JORDAN. Do you have to give him a permit?

Mr. KOEBEL. Yes. We give him a permit and, of course, it will be subject to proper conditions for the use of the forest land.

Mr. FLORANCE. I would like to add one qualification to that if I may. There could be some situations where a permit would not, in the judgment of the Secretary, be in the public interest. I am thinking possibly of some land that may be privately owned within a wilderness area.

Now, within the wilderness area it is the policy of the Department not to permit roads. So that there would be some question as to whether under the terms of these regulations the Forest Service would be required to issue a permit for a road across the wilderness area. But generally speaking, a permit would be issued and access would be permitted across the national forest land to the nonfederal land within the national forest boundaries.

Senator COOPER. I want to ask about this specific kind of situation, and I go back to my previous question. Assume that there is a property owner who has owned a tract of land within the boundaries of the national forest, and that this property owner has used a right-of-way which passes over forest land, and has used that road prior to the time that the Department acquired this forest land. Do you hold that the Attorney General by issuing this opinion had the authority to wipe out whatever property rights that man had acquired?

Mr. FLORANCE. No, sir. I don't think the Attorney General's opinion touches upon that question at all. As a matter of fact, the Attorney General's opinion relates only to the rights that may exist in an actual settler across national forest lands that are reserved from the public domain, not those that are acquired.

Now, with respect to acquired national forest lands such as we have primarily in the East—Kentucky, North Carolina—those lands when they are acquired, if there are existing roads in which the public

or private citizens have rights, the Government acquired the land subject to whatever rights were in existence and the acquisition by the Government didn't change those rights.

Senator COOPER. I wanted that clear. I am thinking about the situation in the eastern part of the United States which might be different from the West. I know of situations where property owners who owned their lands, had roads in existence which gave these property owners ingress to their property for the full use of their property. Later the forest lands were acquired around or adjacent to their property. In some cases the Forest Service has taken over roads and improved and maintained them, which are the roads which these property owners formerly used and have always used.

Now, is there anything in this bill which would prevent the full use of those roads for the benefit of these property owners that they have always had?

Mr. FLORANCE. No, sir.

Senator COOPER. Nothing at all?

Mr. FLORANCE. No, sir.

Senator COOPER. The property owner in that situation could use that forest road now owned or made on forest lands, maintained by the Forest Service, with the same full use that he has always had.

Mr. FLORANCE. If he had a right to use a roadway that was in existence across lands that were acquired by the Government and became national forests, he would continue to have those rights after that land was acquired. Those rights if they were not wiped out by a condemnation proceeding or by purchase from him would still remain in him.

Senator COOPER. I think you are correct. I do not believe that he could be deprived of his rights except by compensation, either voluntary or by condemnation.

Now, I understand perfectly that if a property owner desires to secure an easement to go across forest lands which he did not own or did not have, he must negotiate with the Forest Service to secure that easement. That is correct, isn't it?

Mr. FLORANCE. That is correct.

Senator COOPER. And under present law if the Forest Service desires an easement across the land of a private owner, the Forest Service must negotiate with the private owner to secure an easement.

Mr. FLORANCE. We must do so except for this, that at the present time if a person comes in and applies for permission to use the national forest with the road, the Secretary of Agriculture can condition the granting of that permission or the Secretary of the Interior, if he grants what we can refer to as an Interior easement today, can condition that upon the applicant conveying to the Government reciprocal rights that the Government needs.

Senator COOPER. I can understand that. Because it is a negotiation, if the Forest Service desires to place that condition upon the private owner, it can do so. With respect to the Forest Service acquiring an easement across private lands at the present, it can be done by negotiation. If that is not effective, the Forest Service has the right to take an easement over private property by condemnation or payment of compensation. Is that correct?

Mr. FLORANCE. The Government has the power of eminent domain and could condemn.

Senator COOPER. Why, is that not still the proper approach? I am asking these questions to bring out the reasons for this bill. If the Forest Service cannot secure the rights-of-way across private property that it deems essential to its needs, why doesn't it use the method of taking which is prescribed, which it has under eminent domain?

Mr. FLORANCE. It does use that method. That, of course, is a right that runs to the sovereign and the Government uses that whenever the occasion arises.

On the other hand, the Government also has the authority in situations such as we are talking about to say to an applicant for an easement or permit to build a road across the national forest, to say that that will be issued only if the applicant conveys to the Government a reciprocal right.

Senator COOPER. What you are asking in this bill, then, is for the Congress to legislatively declare what is actually the policy of the Forest Service at present with respect to negotiation—which is that the Forest Service may say to a private owner: We will give you an easement across Forest Service land, conditioned upon your giving the Forest Service an easement across your land.

Mr. FLORANCE. This bill that the Secretary of Agriculture recommended does not contain any provision to that effect.

Senator COOPER. You have been testifying to the effect that you feel it is necessary to have such a power——

Mr. FLORANCE. Yes.

Senator COOPER (continuing). In order to secure this kind of reciprocity.

Mr. FLORANCE. We have testified that that is the power that exists in the Secretary today, not the power that this bill would grant to the Secretary.

Senator COOPER. Tell me what is it, then, that this bill would give to the Secretary, what powers does it give to him that he doesn't possess at present, other than the power to grant an easement?

Mr. FLORANCE. Well, that is one of the main things that this bill would give. Section 2 would give to the Secretary power to grant easements across national forests and other lands administered by the Forest Service.

Section 3 has to do with the termination of such easements.

Section 1 I should have referred to and that is more or less of a policy statement and finding as to the desirability of having an adequate road system for the national forests.

Section 4 would provide the Secretary with authority to construct and maintain forest development roads within the national forests by a combination of methods. Part of this is a repetition of existing authority.

One of those methods is by use of appropriated funds, which authority exists today. One of those is by requirements of purchasers of national forest timber and other products including provision for amortization of road costs in contract. That in part exists today but not completely.

The third is by cooperative financing with other public agencies and with private persons. That authority exists today.

And, 4, by a combination of these.

Then there is a provision in here on the requirements of timber purchasers for the construction of maximum economy roads in connection with timber sales.

Senator COOPER. May I interrupt one moment if you will permit? I want to keep on this subject that I have started, which goes to these rights in the acquisition of easements. Assuming that only if section 2 is enacted, what the bill would do would be simply to give to the Department the power which it does not now have, that is, the power to grant permanent or temporary easements. With that power, if it should be given to the Department, your method of negotiation to secure easements would be precisely what it is today. You would negotiate. You could place a condition upon the grantee of easement that a reciprocal right of easement over his property should be the consideration.

Mr. FLORANCE. That is correct.

We would not by this bill enlarge the authority of the Secretary in connection with what he would require for this right-of-way. We would enlarge and firm up the thing which the Secretary of Agriculture could grant. That is what section 2 would do.

Senator JORDAN. Would you yield at that point, Senator?

Senator COOPER. Yes.

Senator JORDAN. In other words, you are asking now that the Secretary be given authority to grant an easement, and so forth—

Mr. FLORANCE. That is right.

Senator JORDAN (continuing). Rather than limiting him to the authority of granting a permit. Is that correct? You grant a permit now, do you not?

Mr. FLORANCE. We can grant permits at the present time.

Senator JORDAN. But you can't grant an easement.

Mr. FLORANCE. We can't grant an easement for roads.

Senator JORDAN. Is that what you want to do?

Mr. FLORANCE. That is correct. We want to have authority to grant easements for roads.

Senator JORDAN. Instead of permits.

Mr. FLORANCE. That is right.

Senator JORDAN. Why?

Mr. FLORANCE. Well, that is something that we need in order to give to the owners of private lands within the national forests who have need for easements in connection with roads on their own timber operations, they need to have more than permits. Now, this is what they have described to us and we recognize that need. This section 2 would enable us to grant to them the thing that they have described to us as being needed by them.

Senator JORDAN. I was just wondering why you wanted it. In other words, a permit can be canceled. That may be for 100 days or—

Mr. FLORANCE. That is correct.

Senator JORDAN. But an easement is a perpetual situation unless you put a termination on it.

Mr. FLORANCE. That is correct.

Mr. NELSON. We would then be in the position of other private owners. If this timber operator has to cross a piece of private land, he can get an easement, and if he crosses national forest lands, all he would

get was a permit. We will now be in a place where we can give him an easement as well as other private owners.

Senator JORDAN. That answers my question on that.

Senator COOPER. I have one other question. Under this kind of negotiation which the Secretary can undertake with a private owner, in which he says the Department will provide a permit, or if this bill is passed, an easement over Forest Service lands, in consideration of the grantee providing an easement over his private land to the Government, the problem of the grantee providing an easement of greater value than the easement granted to the private owner by the Forest Service could arise. Is that correct?

Mr. FLORANCE. There would be many situations like that.

Senator COOPER. Is there anything in this bill that would spell out the requirement upon the Department to compensate the private owner for this value which is larger than the value of the easement granted by the Forest Service?

Mr. FLORANCE. There was nothing in the bill as originally introduced that went to this point, but in the amendments which have been proposed there is language that would go to this question.

Senator COOPER. I note that the Department objects to that language. Why would it object to that language? It seems to me that it would be perfectly fair, that if a person grants an easement of greater value than the one that he receives, that he should receive payment for that added value.

Why not have something in the bill which would make that clear?

Mr. FLORANCE. Senator, the Department has indicated that it agrees with this in principle. In other words, where the Department has need for something that is of greater value than the easement or right that is applied for by the private owner, we recognize that it is fair and proper that adequate compensation be made for that difference in value.

Senator COOPER. You recognize it and you are going to spell it out by regulations, but you are——

Mr. FLORANCE. We have done so.

Senator COOPER (continuing). But you are not willing to put it in the act.

Mr. FLORANCE. As I say, the Department has recommended that that not be put in the language because it could be considered as a restriction upon the discretionary authority which we now have according to the Attorney General's opinion.

Senator COOPER. I do not see how it restricts your authority. It seems to me that to fail to negotiate would be coercive; it would commit the Department to the rather hard position of securing its best terms even though it might not be fair to the property owner.

Mr. FLORANCE. There is no doubt that the present situation gives to the Government a bargaining power which perhaps is not equaled by that of the private landowner. I would like to point out, though, that this situation is not peculiar to the national forests.

Senator COOPER. It is not peculiar to the Government either because they do that.

Mr. FLORANCE. No, sir. That is correct. It is one of the sovereign powers that we have. And the situation is not peculiar to the national forests. It exists today on lands administered by the National

Park Service, on lands administered by the Bureau of Land Management, and other Government agencies.

Senator COOPER. I agree that it takes more thought on this but I do believe there should be something in the bill, which would make it clear that the Government and the private owner bargain on an equal basis. As I see it now, the Government has and it always has a certain coercive power.

Thank you very much.

Senator RANDOLPH. Thank you, Senator Cooper.

Senator FONG?

Senator FONG. Yes, Mr. Chairman.

This bill, S. 1147, was initiated by the Secretary of Agriculture?

Mr. FLORANCE. Yes, sir.

Senator FONG. Now, under section 4 the Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service, in locations and according to specifications which will permit maximum economy, and so forth.

The Secretary at the present time has those powers, has he not?

Mr. FLORANCE. He has certain of these powers, Senator, but not all of them. For instance, today there is no authority to require that timber purchasers construct what we call maximum economy roads. We can require timber purchasers; that is, the purchasers of national forest timber, to build what are referred to as prudent operator roads; that is, roads needed for the operation of that particular sale, but not necessarily roads that would serve the full purposes and the full needs for national forest administration and timber use and other resource use in the areas tributary to that road.

Senator FONG. The Secretary cannot require the private builders to build roads above a certain standard. Is that correct?

Mr. FLORANCE. He cannot require purchasers of national forest timber to build maximum economy roads.

Senator FONG. But he could himself provide for the various specifications for roads within the national forests. Is that correct?

Mr. FLORANCE. That is correct, and that is our policy.

Senator FONG. So therefore he has the powers at the present time to do what is proposed here in section 4. Is that correct?

Mr. FLORANCE. He has authority to do part of what is in section 4 but not all.

Senator FONG. In section 4, if the Forest Service desires to pay for the construction of these roads, it can do so.

Mr. FLORANCE. There is a situation today where difficulties are encountered in that regard. There is no authority to require a timber purchaser to build more than what is known as the prudent operator road.

In other words, you might require that purchaser to build the road that he needs for that sale. Then when you come along to the next sale, up the drainage, you may have to reconstruct that road.

Now, that is inefficient from the standpoint of the Government. It does not provide maximum economy or management of the national forest lands under the multiple-use principles.

Senator FONG. Then the Secretary may not force the private builder to build roads in excess of various specifications at the present time.

Mr. FLORANCE. That is correct.

Senator FONG. But in the matter of financing, there are four ways of financing available to the Secretary of Agriculture at the present time. Is this so?

Mr. FLORANCE. At the present time if a timber purchaser is willing to cooperate and let the Forest Service put up the necessary additional funds to build the higher standard road, then we can do that, but unless the purchaser is willing to do that, at his election, then we have no authority to require him to build the higher standard road.

This would let us require the maximum economy road with the Government putting up the funds that would be needed for the standard of road over and above the prudent operator standard.

Senator FONG. Section 2 would give the Secretary the power to issue permanent or temporary easements, and under section 1 you have a declaration of purpose which states that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential.

Now, in reading this bill, it seems to me that the main purpose is to give to the Secretary the right to give a permanent easement.

Mr. FLORANCE. That is one of the things that the bill would do.

Senator FONG. That seems to be the primary purpose of the bill, and yet your declaration of purpose states something else. Your declaration of purpose says the construction of roads is essential and the gist of your whole bill is to give permanent easements.

Mr. FLORANCE. Well, that is one of the things. Now, there are three principal things in this bill, Senator. One is to authorize the Secretary to grant easements.

Senator FONG. Yes.

Mr. FLORANCE. That will aid the owner of the intermingled private lands. It will also aid the Government in its negotiations for easements because the Government seeks to obtain permanent easements. So it is only fair that if we want permanent easements, we should have authority to grant permanent easements.

Senator FONG. I understand. What I am saying is this—

Mr. FLORANCE. Now, the other two things—

Senator FONG. What I am saying is this, that your declaration of purpose actually is not the declaration of purpose that you wish to accomplish in this bill.

What you are trying to get is the right to give a permanent easement so that you can have reciprocity.

Mr. FLORANCE. No, sir. We think the declaration of purpose is entirely accurate.

Senator FONG. You think it is accurate.

Mr. FLORANCE. Yes, sir. There are two other principal things that this bill would do and one is this question of the installation of maximum economy roads.

Now, the national forests have long been administered under principles of multiple use. Roads should serve all of those needs. This bill would give us some additional authority in that regard.

Also this bill would give us some other authority in connection with requirements for deposits for maintenance of roads by users, and for reconstruction of roads needed. So that there is far more in this bill than just the easement granting feature of it.

Senator FONG. Giving the Secretary of Agriculture the power to grant permanent easements seems to be the gist of the whole bill, so that he could secure from private landowners a permanent easement over their land. That is the purpose, isn't it?

Mr. FLORANCE. That is one of the purposes, to have authority to grant permanent easements.

Senator FONG. That seems to be the primary purpose, so that in getting that permanent easement, you could construct better roads.

Mr. FLORANCE. I would certainly agree that it is a primary purpose.

Senator FONG. And that if you were able to give to the landowner a permanent easement, then you can tell him to do certain things on this.

Mr. FLORANCE. No, sir. This bill was not developed in order to obtain that authority. It was not submitted with that purpose, and we are not recommending it for that purpose.

Senator FONG. But throughout this bill it seems to be the purpose. That is my interpretation of the bill.

Mr. FLORANCE. We don't think so. We think that question has been injected into this bill by the amendments which have been proposed and we admitted we are recommending against these amendments in order not to lose some of the authority that we have today, but not authority that this bill would give to us.

Senator FONG. There are four methods of financing road construction.

Will this need much appropriation?

Mr. FLORANCE. Yes, sir. We need a great deal in connection with the construction and maintenance of roads, and appropriations for that purpose have increased materially over the years.

Senator FONG. Do you feel that the added fees that you can charge will take care of the added roadways you will build?

Mr. FLORANCE. No, sir. This bill does not provide for the collection of fees to build roads. This bill would give us certain authority in connection with requirements for maintenance where the use of the road makes maintenance necessary. Or for the——

Senator FONG. My last question. I have some visitors from Hawaii here representing Girls Nation whom I would like to meet. So I will ask one more question.

How much will this cost the Federal Government?

Mr. FLORANCE. This bill in itself will cost the Federal Government nothing. No appropriations will be needed.

Senator FONG. I understand that. But ultimately what will it cost the Government? Ultimately what will it cost to build these roads that are contemplated? Have you any projection?

Mr. NELSON. I think if you are referring to the additional cost because the Government will pay the difference in the maximum economy road as against the other, overall that would cost less because we are building at the time a maximum efficiency road.

Under the present system if we can only require and only build the prudent operator roads as Mr. Florance pointed out a while ago, we would have to rebuild that road before it would be suitable for all the purposes of national forests.

It would cost more to rebuild the road—to build it the first time and then have to rebuild it—than to build at the maximum efficiency the first time.

Senator FONG. Will you give the committee some idea as to how many miles of road you are contemplating? What would be the ultimate cost of such a program?

Mr. NELSON. I can't give you that figure at the present time. Our present authorization is \$85 million a year for roads. We are not accomplishing the overall program that is necessary in the long-term management of the national forests very fast.

Senator FONG. Well, even if this were passed, you would still have to come to the Appropriations Committee for appropriations.

Mr. NELSON. Yes. And also come before this committee for the authorization.

Senator FONG. Thank you.

Senator COOPER (now presiding). Mr. Florance, the act of 1897 has been variously interpreted from time to time. Do you think that it would be a good thing for the Congress to adopt new legislation that would comprehend this subject upon which the Forest Service could issue its regulations?

Mr. FLORANCE. I am not sure that I understood the question, sir.

Senator COOPER. Well, you say the basic act is the act of June 4, 1897, and it has been interpreted in different ways by different Attorneys General since its enactment.

You are now trying to correct some of the problems which these opinions have created by this legislation, and also by regulation. If this committee and the Congress could write a bill which would replace the act of 1897, would that not be the proper thing to do rather than just to leave it to the Forest Service to act through regulation?

Mr. FLORANCE. Senator, we had not looked upon this legislation as being designed to correct any problems created by the Attorney General's opinion, and I don't think this legislation should be considered in that light.

Now, we think that the Attorney General's opinion is one that gives us authority to manage the national forests in the public interest and at the same time meet the needs of people who have properties within the national forests.

Senator COOPER. I have one other question and then I will close.

This goes to the problem of new construction or maintenance of the Forest Service roads and I think it would be more applicable to situations in the eastern part of the United States than it would in the West, although it could be applicable to both.

Assume the case which I mentioned earlier of a property owner whose lands are within or adjacent to the Forest Service land and a property owner who has used a road or right-of-way for years.

By virtue of this bill, would any new obligation be placed upon that property owner to pay part of the cost of improvement of an existing road which he has been using, or pay for its maintenance?

Mr. FLORANCE. Generally speaking I would say no. It would be a rather unusual situation in which that property owner would have to contribute to the improvement of that road.

Now, it is possible that there will be situations where the improvement of the road would be sought by him and mutually sought by the

Forest Service. In that instance there would certainly be some co-operative arrangement entered into, I would assume.

Senator METCALF. For instance, if the Senator will yield, if the property owner were a mining operator and wanted to improve the road to have large trucks, or something, he would be responsible, wouldn't he, to—

Mr. FLORANCE. That is correct.

Senator METCALF. But an ordinary settler or resident would not be affected by this bill at all, would he?

Mr. FLORANCE. I would say no. An ordinary settler might come in and ask for an easement that he needed and in that way he might be able to obtain an easement, but as far as being affected by it, I would say no.

Senator RANDOLPH. Thank you, Senator Metcalf. Thank you, Senator Cooper.

Gentlemen, we have been helped by your testimony and we are grateful for the attention that you have given to this subject matter. I believe that a very sincere effort is being made to understand the provisions of the pending bill as requested by the Secretary, and also the possibilities of appropriate amendments that might be added.

Thank you.

(A letter from the U.S. Forest Service is as follows:)

DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, D.C., August 15, 1963.

HON. JENNINGS RANDOLPH,
Chairman, Subcommittee on Public Roads, Public Works Committee,
U.S. Senate.

DEAR SENATOR RANDOLPH: This responds to your letter of August 8 to Secretary Freeman on questions related to the hearing on S. 1147. This has been referred to the Forest Service for reply.

Enclosed for your information is a copy of a summary of the "Chronology of Major Actions of the Department of Agriculture Regarding National Forest Access."

We are sorry not to have responded sooner to the several questions set forth in your letter which were among those forwarded to us on July 29. We were prepared to answer them at the July 31 hearing but were under the impression that our response should be made when the questions were raised by members of the committee during the hearing.

Our replies to the question are as follows:

1. Under circumstances in which negotiations for exchange of rights may be prolonged for several years, what provision does the Forest Service make for granting temporary access to the applicant during the period of negotiation?

Although in the past negotiations have been prolonged for several years, we now think the cases will be rare under the new regulations when more than a few months will be needed to concluded such negotiations. During periods of negotiation the Forest Service may issue a permit for necessary temporary construction by the applicant. If agreement is reached, the permit can be converted to an easement where National Forest lands of public domain status are involved. If agreement cannot be reached, the owner has the permit for construction and use of the road with the usual provisions as to use of the road by the Government and other national forest users.

Is this a uniform policy throughout the different regions and national forests?

Manual instructions providing a uniform policy throughout the different regions are in the process of being issued. A temporary directive is in effect on this same subject.

2. Do the regulations specifically provide for such grants of access?

The regulations provide for such grants under 212.10(a).

3. At the present time, what is the extent to which the Government is denied access to its own lands by private timber operators? Acreage, volume, and annual allowable cut.

We do not use the term "denied access." We do have many cases where we have an access problem to be solved for public access and removing of national forest timber. We have special information on major cases involving more than 50 billion board feet of national forest timber each in several Western States. On January 1, 1962, there were 188 such cases reported. Forty-two of these were solved by June 30, 1963. This leaves 146 cases where problems remain to be solved. We expect to solve 50 to 60 of these in fiscal year 1964. The 146 cases remaining to be solved on July 1, 1963, involve 2,600,000 acres, with 35 billion board feet of national forest timber, and an annual allowable cut of 450 million board feet.

Has the Forest Service distinguished between access denials over established systems of private roads and bare land rights-of-way?

No distinguishing has been made between access problems over established systems of private roads and bare land rights-of-way in the case data now available. In most instances where there are established roads there are also raw-land easements involved.

In general, on what proportion of the total acreage have negotiations been conducted or initiated?

Negotiations have been concluded or initiated on about 50 percent of the acreage reported in the major case data, compiled as of January 1, 1962.

Sincerely yours,

EDWARD P. CLIFF,
Chief.

By HAMILTON PYLES.

CHRONOLOGY OF MAJOR ACTIONS OF THE DEPARTMENT OF AGRICULTURE REGARDING NATIONAL FOREST ACCESS

1905-50.—Early background. Long-term national forest policy from 1905 on was to obtain cooperation in the extension of roads and trails. Settlers, prospectors, miners, lumbermen, and stockmen as well as counties were encouraged to assist in extending the road and trail system. Until the 1940's there was little demand for timber on the national forests. Agriculture was of the opinion that the act of June 4, 1897, had commanded it to provide access across national forest lands to any of the private lands. It could not exact from the private landowners conditions as the price of access except for the protection and preservation of U.S. property.

1950.—First cooperative road construction and use agreement worked out to reach blowdown timber.

1952.—Forest Service adopted policy not to sell timber in areas where access was restricted until access provided equal opportunity to all bidders.

1955.—Early criticism of national forest access policy. Variations of the means of solving access problems by the Bureau of Land Management in the O. & C. lands of Oregon and the Forest Service were criticized by some members of Congress. Joint hearings on access in the West in 1955 were held by special subcommittees of the Senate and the House. The staff report did not point out substantial differences in laws, management history, and extremely varying patterns of landownerships in the national forests as compared to the rather uniform checkerboard pattern of the O. & C. lands in western Oregon but did contain an opinion that corporations were not entitled to have access as a matter of right as were the actual settlers under the 1897 act.

1955-57.—Foundations laid for change in policy. Forest Service representatives explored legislative needs with landowners who were sharing in construction of roads.

1957.—First easement granting and related access legislation proposed. First proposal sent by the Secretary of Agriculture to Congress proposing among other access features that the Secretary be given easement-granting authority.

1959.—Legislation proposed by Agriculture to include reciprocity in rights-of-way granting. Easement-granting legislation was recommended by Agriculture conditioned on reciprocal grants.

1959.—Special access funds. Lewis River drainage in the State of Washington had no access over a private road leading to the 7 billion board feet of national forest timber. Senator Jackson, with the help of Senator Magnuson and other Northwest Senators, obtained a special access appropriation in fiscal year 1959 to help solve such problems. The appropriation continued through fiscal year 1963 and has helped solve many critical and complex access problems since then in the Western States.

1959-61.—Forest Service met with NLMA representatives. Two principal meetings were held in 1959 and one each in 1960 and 1961 with NLMA representatives to consider Forest Service proposals for access legislation. Industry opposed reciprocity, road use fees, and other features. There were many other informal, lesser meetings with representatives of industry.

May 27, 1960.—National forest access legislation opposed. May 27, 1960, NLMA opposed the administration bill, S. 1797, before Senate Subcommittee on Conservation and Forestry. In that testimony Mortimer Doyle states in part: "While we have had numerous meetings and discussions with the Forest Service on road matters over the years our great concern with this bill produced special meetings * * *."

August 1960.—Legislation failed to pass. The bill again failed to pass after three sessions of Congress. Controversy in the summer of 1960, touched off by a speech by Senator Morse, led to analysis of larger access problem cases.

March 2, 1961.—Analysis on access cases completed.

August 2, 1961.—Secretary Freeman asks the Attorney General for an opinion. It is against this background with cooperation growing in more areas and yet with increased criticism of both the Forest Service and private landowners in areas where there was no or limited national forest access, that Secretary Freeman, on August 2, 1961, wrote to the Attorney General requesting his opinion on the key questions concerning the act of June 4, 1897. These questions and the related large volume of material were studied by the Attorney General through the fall and winter of 1961.

May 8, 1961.—Department of Agriculture asks the Comptroller General for access decisions. The Secretary of Agriculture, by letters of May 8, 1961, and February 2, 1962, requested the Comptroller General to say whether the Government had the authority to recover part of its road costs creditable to use of the national forest roads by non-Federal commercial haulers.

February 1, 1962.—Attorney General Kennedy issues opinion on egress-ingress. On February 1, 1962, the Attorney General completed his response to the inquiries of the Secretary of Agriculture on the questions raised. The Attorney General's opinion held that while the act of June 4, 1897, did provide "actual settlers" with a statutory right across national forest lands to the owner's property, the right was absolute only as to these and did not apply to others. The Attorney General opined their crossing of national forest lands could be conditioned upon their agreement to give in return the right to the United States to cross the applicant's lands.

March 2, 1962.—Comptroller General issues decision relating to access.

March 1962.—Forest Service interim instructions. The Forest Service instructed its field organizations to, insofar as possible, comply with the intent of the Attorney General's opinion pending development of regulations and instructions.

April 4, 1962.—Interior Department asked to issue easement. On April 4, 1962, Secretary Freeman asked the Secretary of the Interior for the help of that Department in utilizing the act of March 3, 1899, for issuance of permanent easements across national forest lands reserved from the public domain. On May 4, 1962, Secretary Udall responded by letter agreeing to the issuance of the rights-of-way. The Forest Service would continue to negotiate and administer the rights-of-way agreements. The Bureau of Land Management placed the new procedure in effect by instructions to the field August 24, 1962.

March to August 1962.—Developing regulations—First review. In the meanwhile the Forest Service and the Office of the General Counsel in the Department of Agriculture developed a draft of regulations which was first circulated to reviewers in August 1962. The regulations included numerous features dealing with road management, cooperative road development and use with counties, as well as relationships with landowners in building and using road systems.

October 23, 1962.—The cooperative program regulation adopted. October 23, 1962, a simple regulation was adopted to permit cooperation to continue in developing and using jointly built road systems during the interim until comprehensive regulations could be concluded.

November 9, 1962.—Meeting with NLMA. The Forest Service met with representatives of industry on November 9, 1962, to listen to and answer protests regarding the regulations.

January 4, 1963.—Secretary Freeman asks Comptroller General whether national forest access funds could be used to improve for national forest purposes a road on county-owned rights-of-way under suitable safeguards. The Comptroller General answered affirmatively on April 24, 1963, and thus helped round out the access regulations in the field of cooperation with counties.

March 18, 1963.—Redraft of regulations issued with notice of hearing. The redrafted regulations and notice of hearing went to over 100 Members of Congress and to all reviewers who had the first draft.

April 1963.—Meetings held with both commodity and conservation organizations. These were held at invitation of the Forest Service to discuss many areas of common interest, including access to national forests.

April 9 to 22, 1963.—Industry pressured Secretary for delay in hearing and to have one later in West.

April 10, 1963.—Assistant Secretary Baker agreed to have Portland hearing.

April 23, 1963.—Hearing held by Assistant Secretary Baker in Washington, D.C. Record contains 145 pages. Industry opposes Attorney General's opinion and criticizes Forest Service for not following NLMA principles. Conservation organizations favor regulations and ask they be in on any meeting with industry to modify regulations.

April 29, 1962.—Hearings in Portland, Oreg., before Department Counsel Lyle Carlson. Industry continues attack and urges Secretary Freeman to look at sample roads before adopting regulations.

May 1, 1962.—Assistant Secretary Baker informed Senator Jackson that Dr. Selke would be available to look at roads and to advise Secretary Freeman regarding them.

May 13 to 18, 1963.—Dr. Selke looked at road systems in Washington, Oregon, and California.

June 5, 1963.—Executive Assistant to the Secretary Tom Hughes represented the Secretary in a meeting with Weyerhaeuser Co. and Northwest Senators. Forest Service and Office of General Counsel staff accompanied Mr. Hughes to the meeting of Senators Jackson, Magnuson, Morse, and Neuberger with Weyerhaeuser Co. spokesmen.

June 10, 1963.—The national forest access regulations were approved by Secretary Freeman for publication. By noon copies were delivered to the four Senators who had attended the June 5 meeting with Weyerhaeuser. Distribution continued to the field organization and to interested parties who had reviewed the regulations in draft. Interim instructions had been designed and issued to carry out the October 1962 regulations. The field organization was, on June 10, 1963, instructed to continue work under them until additional manual instructions were issued.

June 11, 1963.—Senate Subcommittee on Roads of the Public Works Committee held hearings on S. 1147, which is the administration measure to provide for several additional access authorities including easement granting authority to the Secretary of Agriculture.

July 22 and 23, 1963.—Attorneys of industry met with attorneys of Department of Agriculture to discuss legal interpretation of laws, regulations, decisions, and opinions related to forest access. Administrative employees of the Forest Service attended and industry explained its interpretation of its proposed amendments to S. 1147.

July 29, 1963.—Forest Service met with representatives of conservation organizations. This was at request of the organizations, to discuss S. 1147.

July 31, 1963.—Second hearing on S. 1147. Forest Service again testified.

Senator RANDOLPH. Dr. Spencer Smith.

STATEMENT OF SPENCER M. SMITH, JR., SECRETARY, CITIZENS COMMITTEE ON NATURAL RESOURCES, WASHINGTON, D.C.

Mr. SMITH. Mr. Chairman, I am Dr. Spencer M. Smith, Jr., secretary of the Citizens Committee on Natural Resources, a national conservation organization with offices in Washington, D.C.

It is my pleasure to represent the board of directors, which is our governing body and is composed of some of the outstanding professional men in the country.

We were prepared to testify on S. 1147 on June 11, 1963, when this subcommittee first entertained a discussion on this measure. The chairman will recall that the scheduled hearing was for 1 day only and time did not permit the taking of our views at that time. I briefly appeared before the committee at the close of that session and indicated that we were most anxious to offer our views on S. 1147 and suggested that in all probability other conservation organizations would be interested in testifying.

During the hearing and subsequent thereto the industry proposals were available for consideration. May we say at the outset that we have tried to obtain as complete an understanding as possible relative to the problems facing the industry as a result of the Attorney General's decision in February 1962, and the regulations implementing that decision by the Secretary of Agriculture in June of 1963.

Our hope at the first hearing as well as now was that an adjudication of the industry's difficulty with the regulations could be handled separate and distinct from S. 1147. Certainly the subject matter of S. 1147 predates the impact of the Attorney General's decision.

Therefore, the industry's concern, which is with the promptness of obtaining access across national forest land and the effort to achieve what they feel to be a compensable interest in these roads, can still be adjudicated without amending S. 1147.

While one is usually reluctant to make general statements, it would seem that there is a concurrence by the Forest Service, conservationists, and industry as to the basic substance and purport of S. 1147, as drafted. It would be my judgment that, if the industry amendments were accepted, there would then exist a considerable difference of opinion as to the appropriateness of the legislation.

By and large, we support the purposes and goals that we feel S. 1147 seeks to accomplish. As we interpret the measure the proposal recommends:

- (1) That the Secretary of Agriculture be empowered to grant easements over the lands administered by the Forest Service and related lands under the jurisdiction of the Department of Agriculture, for purposes of roads' rights-of-way.

- (2) That the Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads.

- (3) That financing of such roads be by use of appropriated funds, by requiring users to provide for the amortization of road costs, by cooperative financing, and by a combination of all methods.

- (4) To require the users of roads to maintain them in accordance with the use requirements.

We feel the purposes of the bill, in attempting to provide the Secretary of Agriculture with the authorization to construct and maintain an adequate system of roads and trails for the national forests, is a proper and necessary condition of the responsibilities of his office.

We are a little curious as to the need for the language in section 1, which appears to reiterate the intent of the multiple-use bill. We would suggest a simple statement indicating that a proper system of roads and trails is needed to implement the Multiple Use Act of 1960.

At the present time the Secretary of the Interior has the authority to grant easements on lands of his responsibility and those of the national forests created from the public domain. We hope the committee will make it clear that the use of the easements in regard to forest land will effect a coordinated policy so that such easements do not encumber the forest lands needed for other Federal purposes.

As many members of this committee are aware, the basic easement granting authority to national forests created from the public domain has generally been considered in the Interior Committee.

The experience in handling the easement question has often involved the problems of many other uses and thus the care of drafting such easements so as not to preclude other uses is of extreme importance.

Senator METCALF (now presiding). Just a moment. However, this is the committee that has the jurisdiction over access roads and forest roads and public roads.

Mr. SMITH. I didn't mean to imply that. My implication meant that most of our discussion about public domain lands had been involved in the Interior Committee. I did not mean to imply that they had the authority over access roads at all.

Senator METCALF. Thank you, Mr. Smith.

Mr. SMITH. We are also concerned with section 4, dealing with the financing of these roads. In the case of harvesting timber on the national forests, we would hope to avoid placing a burden of major road construction as a part of timber sales upon the timber companies.

We generally feel that it is sound policy to construct main line roads under contract and using roadbuilders. We envisage a number of cases where roads may be needed for recreation purposes and they should not have to await timber sales. Such roads would obviously be constructed for multiple purposes. There are a variety of cases in the past, such as the Kern Plateau, where it was necessary to await timber sales before roads were constructed.

In this case, if a road had been constructed prior to the timber sale, it would have preserved the opportunity for more recreation without destroying the natural beauty that a single-purpose timber road proceeded to do. We would like to see the vast majority of our permanent roads constructed with appropriated funds.

There is the ever-present difficulty when a purchase of timber is tied to the construction of a road, since the result too often is a road constructed just to the level needed to harvest that particular sale. We view this as wasteful in that this may very well preclude other users and be destructive to the land itself.

We would prefer that timber contracts be separated from timber purchases. This would have two advantages: The first would have the roads serve more than just the purposes of timber harvest.

Secondly, there would be no burdens upon the company, as such, to construct a road, since this would be done by the practice of direct contracting and accepting the lowest bidder in regard to the specifications of the road.

If this were accomplished, then the provision indicated on page 3, line 14, which provides that a user of the road need not bear that part of the cost necessary to meet higher standards than required for this operation alone, would no longer be necessary.

For fiscal 1963, approximately \$60 million was allocated to the Forest Service for road construction and maintenance:

	<i>Million</i>
Direct government contract-----	\$12
Road additions by timber purchasers-----	19
Maintenance-----	12
Reconstruction of bridges and trails-----	17

Under the combined timber purchase and roadbuilding contract, however, \$40 million was expended for the construction of roads.

These expenditures covered only the road cost and did not involve timber cost.

Road construction by timber purchasers has recently been at a very high level. These expenditures amounted to \$44 million in 1961, \$47 million in 1962, and \$40 million in 1963. This is in sharp contrast to a decade ago when the amount of 1953 was \$10 million.

In summary, then, our position is briefly as follows:

(1) Certainly, the Secretary of Agriculture should be granted the authority to enter into easements as a means of facilitating necessary road construction, but with the caution that such easements be well coordinated with other uses and not be drawn so as to preclude or contravene other important uses of the land.

(2) Indicate that the primary policy to guide roadbuilding in the national forest be for multiple purposes. These roads should be constructed not necessarily and only for the purpose of timber harvesting. When they are constructed to enhance timber harvesting, every effort should be made to make sure that they are for the higher standards of multiple use.

(3) Timber purchases and road construction as a matter of primary policy should be separated. Contracts for roadbuilding should be contracted for by advertised bids and with appropriated funds. Such exceptions to this general policy as may be warranted should be authorized only as a special case and should be occasioned with such infrequency that no question is raised as to the preferred policy.

We have separated properly our consideration of S. 1147, as drafted, and the proposed amendments offered by the industry. S. 1147 places the Government in a position to offer permanent easements or the kind of guarantees the industry needs. The industry wishes to go further into another subject than that covered in the bill.

In attempting to understand the statement of Mr. Orell and his colleagues, it would appear that the principal difficulty is the ruling by the Attorney General that persons owning property but not residing thereon and were surrounded by or otherwise commingled with national forest lands were not "settlers" within the meaning of the Ingress-Egress Act of June 4, 1897.

The act of 1897 had been interpreted as providing property owners with the right to cross national forest land in order to reach their own lands. Under this past interpretation, the Forest Service could not prohibit such right of access. It has been indicated that the Forest Service granted stipulations for such ingress and egress and it is obvious that the Forest Service had a mandate to allow ingress and egress on the application of a landowner to cross national forest land to reach his own.

The Attorney General's opinion placed the Forest Service in an improved bargaining position indicating that it would be proper for

the Secretary of Agriculture to grant access to private lands upon receiving from the private landowners similar access to national forest land.

One of the industry's objections, as we understand it, is the length of time that may be needed in negotiations between the Forest Service and the private landowner to arrive at a final settlement as to the terms of trade.

It is our understanding that the Forest Service has planned under the new regulations to grant prompt access while negotiating the comparable values to be exchanged. We can understand their reluctance to have such a stipulation as a statutory effect, however, since this could inhibit their ability to negotiate for access across private lands in some cases.

If I may interrupt myself there, what I have in the way of meaning is to suggest the situation whereby a private company may ask for a 2-year temporary permit and if the Forest Service granted this, it would depend upon what they were going to do with the timber that they were crossing the national forest lands to get.

If they were going to clear cut that in a period of a short time, then the Forest Service would have nothing to negotiate for. If, on the other hand, they were going to manage it over a long period of time, then they would certainly have an interest in maintaining that access to that land for management purposes.

Under these conditions, it would seem quite appropriate for the Forest Service to grant 2-year easements while the negotiations were going on, but I can foresee certain circumstances—they may be few in number—where the Forest Service would essentially abrogate their position or what trading rights they had in attempting to get easements for other lands.

That is why I would think that it may not be advisable to make this a statutory provision.

A further concern of the industry, indicated by their recommended amendment, is what they feel would be their compensable interest when they build a road using exclusively private funds to cross national forest land in order to reach their own lands.

As we understand the industry position, they claim that this road enhances the value of the national forest and to that extent they should be compensated for this added value. This is an issue upon which many conservation organizations and industrial users have disagreed for a number of years. Whether it is grazing on the public domain or the harvesting of timber, our position has traditionally been that the granting of access in no way bestows any kind of equity to the person receiving such access any more than a tenant who rents a house and makes capital improvements thereon, during the time of his tenancy, has achieved equity.

The situation is different, however, if there is an agreement between the Forest Service and the private owner that the road to be built will be of a higher standard than required by the private landowner.

Then a compensable interest would accrue to the private landowner to the extent of the additional costs incurred because of the higher standard.

If, under this agreement, the landowner constructs the road to such a higher standard with his own funds, he certainly has a compensable

interest brought about by the increased costs and such a compensable interest would be recognized by the Forest Service in seeking a reciprocal easement upon the land of the private landowner.

Without the above conditions, we would not agree that a compensable interest is vested in a private road constructed at the landowner's expense to meet his access needs to cross the national forest lands to his own lands.

It is our belief that the Eastland-Grant Act, sometimes referred to as the Multiple-Use Act of 1960, charges the Secretary with the full consideration of managing the national forests on a multiple-use basis.

It would not be in the spirit of that act to leave the planning of many of the roads and trails completely to the industry's desire as to when, where, or to what standard it desired to construct such roads, or to allow a unilateral determination of how much they would be compensated for in the construction.

There has been a growing concern by many that access to national forest land was necessary. A failure to allow people to obtain access to land owned by the people is just as unjust as depriving a private landowner access to his own land. In addition, some timber areas can be opened for competitive bidding if access to national forest land is readily available.

It has often been contended that access to the national forests has not been nor is now a problem, since the Government has the right to condemn private lands in order to obtain this access. The problem is not vitiated by this governmental power, however, since funds must be available in order to act upon the valuation stipulated by the courts.

If such funds are not available to pay for the taking of the land condemned—the condemnation action is set aside. The problem of Government agencies to secure appropriations for settling condemnation cases has been difficult at best. There is also a deep concern by the Congress that such authority has the potential of great abuse. In fact, therefore, acquisition by condemnation has not been great and considerable caution is used by executive agencies in solving their problems by this route.

We are not suggesting that the industry problems be ignored or that the national forest be managed without regard to industry. We are acutely aware of the dependence upon the national forest for much of the timber economy.

We do feel, however, that the philosophy of having the bargaining position of the Forest Service strengthened in order that the multiplicity of uses in the national forest can receive full consideration is sound and that the newly promulgated regulations deserve a trial.

That is the end of my prepared comments.

Senator METCALF. Thank you very much, Dr. Smith.

Senator Jordan?

Senator JORDAN. I have no questions.

Senator METCALF. Senator Cooper?

Senator COOPER. I would just like to say I think it is a very clear and good statement of your position.

Mr. SMITH. Thank you.

Senator COOPER. I have been interested in your references to the rights of a private person to compensation for roads that have been built by a private person to harvest his timber. I have not gone into

this thoroughly, but I think your statement on the legality of the situation is a fair statement of the legal situation. If a private person built or made improvements for his own interests and without any agreement as to compensation for such improvement, I do not know of any situation where the law allows compensation for it.

Mr. SMITH. Well, one of the things that we have been concerned about, and I have thought about it in a considerable amount of time, is one of the first amendments proposed by the industry in which there is in this trade or reciprocation, there is going to be a fair exchange.

The difficulty that I have is the one that Senator Metcalf addressed himself to earlier, that these trades never come out equal. In other words, 10 miles or 1 mile, it is usually on that side and the industry amendments I would think would have to have the words in it—something like, "Such grant may be conditioned upon receipt of consideration which shall be substantially equal to the fair market value of the easement granted or given in cash or kind," because I don't see how some of these things are going to possibly come out unless there is an exchange of cash or exchange of value.

In addition, if the private owner wants to cross 10 miles of national forest land but what the national forest essentially wants is only one mile access across his land, there obviously is going to be a difference in value. How is this difference in value going to be adjudicated? And I would think on the one hand the industry may very well have to pay the additional value or, if the shoe was on the other foot, the national forests pay the additional value. That is, what fair and comparable value means I think causes me some difficulty.

Senator COOPER. That is all I have.

Senator METCALF. I thank you for your statement, Dr. Smith, and I want to say that I have given this question of access roads from the main lines some attention before, and as a conservationist——

Mr. SMITH. You certainly have.

Senator METCALF. And as a man who believes in harvesting the mature timber at the time when it is mature, I feel that it is very important to have appropriated funds, as you have pointed out, for the main line access roads. It isn't always that the next adjacent timber is the plot that has matured and ripened.

And, of course, many of us believe that roadbuilders should build roads and timber harvesters should harvest timber.

Mr. SMITH. I agree with you. I can say that in my discussions with the industry, I don't think they would have too much objection to that. I may be wrong but——

Senator METCALF. Especially when we are building roads to a higher standard than actually is required to get the logs out.

Mr. SMITH. That is right.

Senator METCALF. They should be built by experienced road contractors rather than the timber operator who uses his cat on a day off. And, of course——

Mr. SMITH. That is right.

Senator METCALF. Another thing that has developed in our country is that the cost of access roads is so tremendous that we have to have such large sales that only a handful of timber operators can bid, and many of the gyppos and small operators have neither the experience, the equipment nor the capital to build roads.

Mr. SMITH. That is right.

Senator METCALF. And so you have performed a service in pointing out the need for appropriated funds for this access road which would largely solve a good many of the problems that we are faced with today.

Mr. SMITH. Well, sometimes, Senator, you know, we have been referred to as kind of representing little minority groups of bird and bee lovers and essentially the actual economic interest of recreation has not been terribly significant.

I was somewhat cheered by a short and brief statement before the Joint Committee on the President's Economic Report not long ago indicating that probably the recreation industry is well in excess of \$10 billion in this country, and the National Association of Manufacturers which is not given to overstating industry profits, has indicated that there is somewhere between \$2 billion and \$3 billion of industry profit involved, and in some of these areas the recreation needs—I don't think I have to expand on this—the recreation needs in some of these areas are just tremendous, and therefore what is happening, if we are not going to have appropriate roads to carry this travel, it is really going to be a deleterious factor on the national forests because we are going to get greater erosion, roads clogging, and all kinds of problems which are going to frustrate the industry problems as well as frustrate the ultimate use of recreation. That is why I think these higher standards roads are so important and I think they will serve all the people, including the timber management.

Senator JORDAN. Mr. Chairman, may I ask a question?

Senator METCALF. Senator Jordan.

Senator JORDAN. If a purchaser of timber needs access to his timber he has to build his own road. That is correct, is it not?

Mr. SMITH. Do I understand your question, Senator, that this man has purchased now a tract of land from the Government?

Senator JORDAN. From the Government; yes.

Mr. SMITH. From the Government in the national forest area?

Senator JORDAN. Yes.

Mr. SMITH. And therefore his problem now is access to that newly purchased land within the borders of the national forest.

Senator JORDAN. That is right.

Mr. SMITH. Is that the problem?

Senator JORDAN. Yes.

Mr. SMITH. I would assume, in the first place, that he wouldn't probably have purchased it unless there was some access to it, but secondly—

Senator JORDAN. Suppose he has to provide that access, to pay for that.

Mr. SMITH. If he has to provide an access, as it is at the present time, I think all the Department can hold for is a prudent operator road. I think that is part of the function of this bill, to make that road conform to a higher standard, charging the person only what he would normally have to pay for a user road but paying for the addition to bring it up to a higher standard through a direct appropriation.

Senator METCALF. I think I can help the Senator a little on that. And maybe we can call on the Forest Service. The purchase usually isn't a purchase of land for fee. The purchase is just a purchase of the timber.

Senator JORDAN. I understand.

Senator METCALF. And sometimes the purchase is made with the provision that the purchaser must build the road. The stumpage value of the timber therefore decreases because of the cost of building the road. And as I pointed out earlier, sometimes on these large sales, the cost of the road is a tremendous factor in the amount that is bid for the stumpage.

Now——

Mr. SMITH. It should be pointed out, Senator, that in any event, the Government pays for that road, whether it is through direct——

Senator METCALF. That is what I am coming to. In any event, the taxpayer pays for the road. He either pays for it with a less value to the stumpage of the timber or he pays for it out of appropriated funds.

Senator JORDAN. Or you let the timber stay there and rot and you get nothing. You have to get it out. We don't actually lose money, the Government doesn't, if it makes the sale of timber. Otherwise it wouldn't sell it at all. If it does, it will be foolish.

Mr. SMITH. Presumably so. Presumably our people who are managing our national forest lands will try and get the marketable value out of the timber.

I think two things happen, however. One is when we build, when we construct these roads, we limit them to the use just of getting the timber out. And secondly, I think if memory serves me correctly, if we are forced to take that out of the stumpage price, that would mean that the returns to the individual counties in some instances would be also affected. I think Senator Metcalf can respond to that better than I. But I think there is a difference in the county receipts from the national forest receipts when that is taken out of the actual timber sale. In other words, the stumpage is depreciated, then, if it is made in direct appropriations and this is another reason it would seem to me for the individual counties to benefit by direct appropriations.

Senator JORDAN. Maybe I could phrase the question just a little bit better. You wouldn't sell the timber if it costs more to build a road and get it out than the timber is worth. Nobody would buy it.

Mr. SMITH. I was going to say I don't know who would buy it under circumstances of that type. I think there are——

Senator JORDAN. I was thinking beyond that, though, with the Government spending money to go in and get a piece of timber, and if the Government had to build roads——

Mr. SMITH. Actually this is one of the reasons. Of course, if you are going to build roads, we would hope these roads would be to a higher standard because ultimately they would provide many more uses than just harvesting timber.

One thing we have been aiming for is to try insofar as possible to recognize the total, the multiplicity of uses for the national forests, certainly to have a good road system to meet the needs of timber harvest but also to reach the needs of the burgeoning recreation populace so that they will also be represented.

Senator JORDAN. Thank you.

Senator METCALF. Thank you for a very helpful prepared statement, Dr. Smith.

The next witness is Dr. Thomas L. Kimball, executive director, National Wildlife Federation, Washington.

Mr. Kimball, we are delighted to have you before the committee.

STATEMENT OF THOMAS L. KIMBALL, EXECUTIVE DIRECTOR, THE NATIONAL WILDLIFE FEDERATION, WASHINGTON, D.C.

Mr. KIMBALL. Mr. Chairman, in the interests of time might I submit my statement to the committee as if read and just make a couple of pertinent statements?

Senator METCALF. You may submit your statement in any way you please.

Without objection, the statement will be incorporated in the record at this point as if read.

Go ahead.

Mr. KIMBALL. Mr. Chairman, may I make this observation, that the National Wildlife Federation wholeheartedly supports S. 1147 without amendments.

It is our feeling that the proposed amendments by the timber industry would adversely affect the bargaining position of the Forest Service in dealing with private land owners on access reciprocity. And since the new regulations recently published by the Secretary have not had a chance to operate, we would be hopeful that before legislation was needed, there would be a chance for them to be placed into operation and see how they work before recommending statutes.

I think, too, from listening to the previous discussion concerning the access roads, that the simple solution would be for the Congress to appropriate the necessary funds to build the main-line roads on forest land.

This would permit them to build multiple-use access roads so that the general public could use them for recreation, wildlife, harbors, and other legitimate uses. And not have to negotiate with the timber industry for the cost over and above the type of roads it would take to harvest the timber.

And in the final analysis the Government pays for the roads anyway, whether it is through the value of the timber or appropriated funds, so it would seem to me if it would eliminate any controversy or problems involved in negotiating the percentage cost that should be allocated to the various users to have the Government build the roads initially would eliminate that particular controversy.

Senator METCALF. Senator Jordan?

Senator JORDAN. I want to ask a question that was directed I think to the first witness, Mr. Florance.

He was asked, I believe, why the Forest Service objects to putting into the law the proposed amendments. He replied by saying that the proposed amendments should not be adopted because the Forest Service would—with respect to the first and second proposals—provide for them in the regulations. This seems to put the cart before the horse.

That was a regulation based on the act of 1897. Given that regulation—I don't see why they object to putting it in the law. That has been asked a time or two. I don't see any objection to putting in the law what they say they intend to do by regulation, because over the years we have changes in Attorneys General and they construe the regulations differently, but you can't construe the law in any way but the way the law is.

Mr. KIMBALL. The original law, if I were to answer your question myself, the original law I think gave adequate protection to the private landowner and I suppose we have to depend upon the U.S. Forest Service, the Federal Government, to represent the interests of the general public, 180 million people who also have quite an interest in what goes on in the national forests, and any type of regulation or law which would impair in our opinion the authority of the Federal agency to negotiate on behalf of the public we don't think is desirable.

Senator JORDAN. Well, I don't see why putting in the law what they have in their regulation would impair that in any respect.

Mr. KIMBALL. Well, a regulation can be changed in a sense much easier than the law can be changed and I think it probably gives much greater latitude in deliberations and to meet a wide variety of circumstances under which the Forest Service must operate.

Senator JORDAN. Well, that is exactly what I am talking about. It gives a wider latitude to the Government but it doesn't give the landowner any latitude at all. The Forest Service can change a regulation any time it desires.

Mr. KIMBALL. That is right.

Senator JORDAN. But the man who is asking for something when he comes before them has to abide by the regulation.

Mr. KIMBALL. Of course, we assume two things. One is that the Federal agency is going to be fair with the private landowner. But also we don't want his negotiating power impaired to represent the public, and speaking specifically to the amendments, proposed amendments, to the bill in our opinion this would impair their bargaining power.

Senator JORDAN. Well, I am just asking those things for information. Thank you.

Senator METCALF. Senator Cooper, what questions do you have?

Senator COOPER. I have none.

Senator METCALF. Mr. Kimball, did you hear the testimony of the representatives from the Forest Service?

Mr. KIMBALL. Yes.

Senator METCALF. Did you hear their recommendation that perhaps a solution would be to turn this matter over to the National Advisory Commission?

Mr. KIMBALL. Yes.

Senator METCALF. What would you say to that recommendation?

Mr. KIMBALL. I think that would be all right.

Senator METCALF. You would concur with that, that perhaps that would be a satisfactory solution to administration of the regulation, the Attorney General's opinion, to see what the Advisory Commission could come up with?

Mr. KIMBALL. I think that would be good.

Senator METCALF. I think that is all. Thank you, Mr. Kimball.

(The complete statement of Mr. Kimball follows:)

STATEMENT BY THOMAS L. KIMBALL ON BEHALF OF THE NATIONAL WILDLIFE
FEDERATION

Mr. Chairman, I am Thomas L. Kimball, executive director of the National Wildlife Federation, which has its headquarters here in Washington, D.C. The National Wildlife Federation is a private, nonprofit organization dedicated to the attainment of conservation goals through its educational programs. Individuals who constitute our State affiliates and other supporters of the National Wildlife Federation number an estimated 2 million persons.

I appreciate the invitation to appear here today.

Earlier this year the subcommittee was given the benefit of the attitudes of the timber industry toward this proposal, S. 1147—"to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes." These attitudes were designed to protect the interests of the forest products manufacturing industry. My purpose in appearing here today is to give the subcommittee the attitudes of a significant segment of the public, as reflected through our organization, on the same proposal.

We believe that the construction and maintenance of an adequate system of roads and trails is essential to the multiple-use management of national forest lands, as pointed out in section 1 of S. 1147, excepting those areas set aside for special purposes such as wilderness. It is our understanding that there is general agreement to sections 3, 5, 6, and 7 of this proposal so the balance of this statement will relate to controversial portions of sections 2 and 4.

Mr. Chairman, as a native of the West and from the experience of having served as administrator of State wildlife agencies in both Arizona and Colorado, I am familiar with many of the problems involved with public land management. I realize there are many difficulties in administering properties and in providing ingress and egress, particularly where there is an intermingling of lands owned by governmental agencies (Federal, State, and local) and by private interests. Consequently, I would not want valid uses of national forests to be saddled with inequities. However, there are some basic principles which I believe the subcommittee should consider quite carefully in connection with S. 1147 and the proposed amendments. I should like to make these points:

First, national forests are properties owned by the people of the United States. The public interest must be kept paramount, and management for any of the many legitimate uses must be in accord with the overall public benefit. Without digressing from the principle, it could be pointed out that, from the individual aspect, outdoor recreation in its varied forms may benefit more members of the public than any other use of national forests.

Second, the use of national forests for any purpose must be considered a privilege and not a vested right. There has existed for many years an unhappy situation in the West where grazing on public lands has been considered an equity or right which, in many instances, has prevented sound management in the best public interest. The privilege of grazing public lands is sold as a right which goes with private property, although the Federal Government denies that such a right exists.

Third, the bargaining position of the Federal agency which administers these public properties must be equally as strong as the private landowner's position in order that the overall public interest is served. Hands of the Forest Service should not be so tied by legal stipulations that management is impractical or directed toward the specific benefit of a particular user group.

In view of the foregoing, I should like to comment specifically on amendments which have been proposed for the subcommittee's consideration.

An addition has been proposed to section 2, which would condition a grant of easement upon a "valuable consideration not to exceed the fair market value of the easement granted." We have no objection to the principle of exchanges of easements of equal value; however, this already is a policy which has been and continues to be under the current regulations followed by the Forest Service.

We are unalterably opposed to a second proposed amendment, which would require that the Forest Service act promptly in granting an easement or permit under conditions requiring recognition of compensable interests. Adoption of such a principle, in effect, would nullify a recent opinion by the Attorney

General giving the Forest Service an improved bargaining position in dealing with access problems. Most certainly, if there is an agreement on a need for prompt action, we would have no objection to a temporary road permit. Private investments are placed on public properties at their own risk of negotiation and this matter should be left to the discretion of the administering officer, the Secretary of Agriculture.

Finally, if there is disagreement on values, we believe this should be resolved by the Secretary and not by the courts. Again, court action implies a "right" which does not exist. Adjudication of such cases where the individual's or corporation's rights are not involved is not a proper judicial matter.

We would agree to clarification of section 4 in a manner which would specify that timber purchases bear only the cost of a "prudent operator" road.

In conclusion, it has been my observation over the years that the U.S. Forest Service has dealt fairly with all user interests and that private timber operators are basing their objections to the recently announced changes in regulations dealing with access negotiations on the basis of conjecture and the fear of being dealt with unfairly.

It would be my suggestion the committee delay any consideration of amendments designed to impair the bargaining position of the U.S. Forest Service in negotiating reciprocal ingress and egress rights until such time as there have been bona fide cases which can be shown to illustrate they are not negotiating in good faith while still protecting the rights of the people to fully utilize their own land to the fullest extent possible.

With the deletion of such amendments, the National Wildlife Federation would wholeheartedly endorse the enactment of S. 1147.

Thank you, Mr. Chairman, for the opportunity of making these comments.

Senator METCALF. The next witness is Mr. C. R. Gutermuth representing the Wildlife Management Institute, and I see that Dan Poole is here representing Mr. Gutermuth.

STATEMENT OF C. R. GUTERMUTH, VICE PRESIDENT, WILDLIFE MANAGEMENT INSTITUTE, WASHINGTON, D.C., AS PRESENTED BY DANIEL A. POOLE, DIRECTOR OF CONSERVATION, WILDLIFE MANAGEMENT INSTITUTE

Mr. POOLE. Thank you. Mr. Gutermuth is preparing to go to Africa and he has been taking a series of shots and one day he feels good and the next day he feels bad. He doesn't know.

Senator METCALF. We know you are very competent to represent him.

Mr. POOLE. With the committee's—

Senator METCALF. Will you state your name.

Mr. POOLE. Daniel A. Poole, director of conservation for the Wildlife Management Institute.

With the committee's permission I would introduce our statement on S. 1147 for the record.

Senator METCALF. Without objection it will be so done.

Mr. POOLE. Just in a very general summary we favor S. 1147 as introduced and we go on in our statement at some length to comment specifically on the amendments suggested by the spokesman for the National Lumber Manufacturers Association early in June, particularly section 2.

We are inclined to think it would not be in the best interests of the administration of the national forest and the public.

Senator METCALF. Questions?

Senator JORDAN. No questions.

Senator METCALF. Thank you very much, Mr. Poole.

(The prepared statement of Mr. Gutermuth follows:)

STATEMENT OF C. R. GUTERMUTH ON S. 1147

Mr. Chairman, I am C. R. Gutermuth, vice president of the Wildlife Management Institute, with headquarters in Washington, D.C. The institute is one of the older national conservation organizations in this country—its program, devoted to the improved management of renewable natural resources in the broad public interest, dates back to 1911.

Conservationists understand that the hearing on S. 1147 is being continued today at the request of the committee so that additional testimony could be received on the amendments suggested by a representative of the National Lumber Manufacturers Association on June 11. Prior to the NLMA's testimony, the institute and most other national conservation organizations looked upon S. 1147 as a housekeeping measure that sought to give the Secretary of Agriculture more adequate authority for managing the national forests in the public interest. The institute had no objection to the bill as introduced.

The amendments proposed by the NLMA on June 11 would expand the scope of S. 1147 materially, however. They go far beyond the housekeeping functions of the U.S. Forest Service as contemplated in the bill, and try to interject some sharply divergent considerations into the legislation. The effect of the proposed amendments has been to change S. 1147 into a controversial measure.

The conservationists are pleased, therefore, that the committee extended the hearing and provided an opportunity for comment on the NLMA's recommendations. Our concern is, of course, that any law that is enacted be fair and just from the standpoint of the individuals and groups that must of necessity do business with the U.S. Forest Service as well as from the public's interest in the proper sustained-yield management of the national forests.

As this committee knows, the Secretary of Agriculture, on June 10, issued revised regulations relating to roads and access on the national forests. Segments of the forest industry testified in opposition to some aspects of the proposed regulations in the public hearings here in Washington and in the field. Some of the points that industry spokesmen raised during the hearings on those new regulations now are covered by the amendments offered to S. 1147.

Let there be no misunderstanding, acceptance by the Congress of some of the amendments proposed by NLMA, particularly to section 2, would enact into law some of the things that the forest industry has been contending it lost under the Attorney General's opinion of February 1962, and the new national forest access regulations. These involve, in the main, a "settler status" with respect to private lands surrounded by national forest, assurance of reasonably prompt access to those lands, and relative bargaining positions between the industry and the Federal Government. Another question raised by the industry involves a definition of the values of rights exchanged with the Federal Government for easements across national forests. Still another suggested amendment involves the matter of compensation for improvements, which we understand to mean access roads, bridges, and similar structures, constructed on national forests by private parties—under both permits and easements—when the Secretary may decide that they should be opened to use by parties and individuals other than the owner.

For purposes of comparison and orderly consideration, I will comment on each of the three amendments suggested by the NLMA to section 2. These are the ones of real concern. I want to say at the outset that the industry's reaction to S. 1147 appears to be based more on apprehension of what the Forest Service may or may not do under the new regulations rather than on any operating experience. Actually, the regulations are scarcely a few weeks old, and it is too early to have any kind of an operating record.

It is not surprising that the industry should have some apprehensions as it moves from a familiar path of doing business with the Federal Government under earlier interpretations of the Ingress-Egress Act to the new rules and regulations. The timber companies had not partitioned the interpretation and the new rules and regulations, and it is only natural to expect that they would try to get things fixed so as to continue to do business in the same old way. But we do not believe that the new rules and regulations can be called unrealistic or inequitable just because they are new. They are based on years of operating experience between industry and Government. They may prove to have weaknesses and inequities from the standpoint of either the industry or the public,

and some corrections may be needed as time and practice prove them necessary.

NLMA's first amendment would add this sentence to section 2: "Such grant may be conditioned upon a valuable consideration not to exceed fair market value of the easement granted." As far as we can tell, the Forest Service follows this course now in its dealings with the timber industry. The Service is doing this as a matter of administrative policy under its operating procedure even though it is not spelled out in law. We can see no purpose of attempting to mandate all of this kind of administrative detail in law. It might become, in fact, a real hindrance.

NLMA's next suggested amendment would expand section 2 by adding "The Secretary shall promptly grant to an applicant for an easement permission to cross national forest lands to his own land under such terms and conditions as will protect the rights of the Government and its assigns to use the road built across Government lands upon assuming a proportionate share of the construction thereof."

Inclusion of such language would be undesirable for a number of reasons. First, the word "shall" gives it a mandatory aspect that would, if adopted, largely reinstate the industry as a "settler" under the earlier interpretation of the Ingress-Egress Act. It would, in effect, circumvent both the Attorney General's interpretation and the new rules and regulations of the Department of Agriculture. Conservationists do not believe that this legislation should be used to negate the steps that were taken by the Secretary after many months of hearings and deliberations to protect the public's interest in the national forests.

Secondly, the amendment, as written, protects only the "rights of the Government and its assigns to use the road built across Government lands. * * *" No mention is made of the need of the Secretary of Agriculture to have suitable discretionary authority to decide where, when, and if at all a road of any kind should be constructed across national forest lands. The amendment, as drafted, would deny the Secretary the right he should have to determine if a proposed road is compatible with the multiple-use objectives that he is under obligation to consider.

To have positive assurance of prompt access is one reason for the industry's suggestion of this amendment, we are told. Time can be extremely important in a timber operation, we realize, and the protection and management of raw materials and their delivery and conversion at the mill all are involved. Red-tape should not be permitted to delay access unreasonably. Nevertheless, conservationists do not want access conditioned on an inflexible mandate that prevents the Secretary from giving equal consideration to the other important national forest values that may be involved. At the same time, we would be among the first to criticize the Service if access were delayed unreasonably for reasons other than those of protecting the public interest in the national forests.

The second suggested amendment also delves into compensability factors in situations where the Federal Government or its assigns might ultimately make use of any roads that are constructed under permission of the Secretary. Compensability likewise is taken up in the NLMA's third amendment.

Any suggestion of compensating a permitted user of public lands for improvement placed on those lands introduces many associated considerations, and it must not be considered casually. Time and time again over a period of many years, certain kinds of privileged users, like livestock permittees, have suggested that they be given compensatory rights for the value of waterholes, fences, and other improvements that they put on public lands. Their requests have not been granted, and conservationists agree with this firm, long-standing position, which is consistent with the basic land laws of this country.

Improvements of this kind are not of lasting duration, and more importantly, they are made for the specific benefit of that particular user of public lands. The erection of a fence or the deepening of a waterhole, for example, benefits that single permittee far more than the general public. In fact, all users of the Federal lands are benefiting decidedly from whatever privileges they are utilizing. Under the grazing regulations that have evolved over the years, the value of private base property has been enhanced materially by the grazing permits held by the landowner. Ownership of base property is a requirement for public-land grazing, but that still does not give permittees an equity in the value of improvements that they make on the public lands solely to increase their returns from preferential grazing privilege.

The construction of a road by a private party across national forest lands for access to his own property may provide substantial improvement to the national

forest either in terms of the management by the Forest Service or in its public use for associated forest values. The road represents no public value, however, unless the Secretary of Agriculture can find that it would be useful for national forest and/or associated public purposes. Until the Secretary makes such a determination, the question of compensability should not hold. The permittee obviously would use the road solely for access to his property. It is expected, under the provisions of S. 1147, that the Secretary would obtain from such permittee similar commensurate consideration in the construction of roads across private lands or in the use of private roads to achieve management objectives of the national forest. Compensation, therefore, could be in kind. This can take place under the Service's rules and regulations. Permits issued for access across national forests are revocable and they give the Service full right to use the road.

If, however, the private party and the Forest Service negotiate reciprocal rights as called for in the rules and regulations, compensability can be computed for roads, bridges, and related improvements. All of that definitely is contemplated in the rules and regulations, and we have no criticism of compensability as a part of fair and equitable negotiations wherein reciprocity is established and a permanent easement is issued.

Again, we think that all these procedures were intended to be followed in the Service's new rules and regulations, Mr. Chairman. We want the Secretary of Agriculture to have necessary and appropriate discretionary authority to enable him to manage the national forests in the public interest. He should not be bound so tightly by law that he has no choice, or that he is forced to accede to every demand.

In summary, Mr. Chairman, we think that the Federal Government should avoid compensating anyone for constructing roads on the national forests that are not needed for the management, public use, and appreciation of the forests. Such roads properly belong outside the national forests roads system, but their location and specifications should conform to the multiple-use requirements of the forest.

We long have contended that the Congress should give the Federal land-management agencies sufficient funds to carry out their necessary programs and activities for improving and managing the public lands. Those annual appropriations would be returned to the Treasury many times over in increased revenue. The probability of Congress ever providing sufficient money is remote, however, so we do not object too strenuously to the payment by the Secretary to private builders of roads that cross national forest lands for the value of physical improvements of such roads that are attributable, in the judgment of the Secretary, to national forest programs and public use. This already is possible under the rules and regulations, and we see no purpose of including anything special in S. 1147.

The public interest clearly requires that the Secretary have administrative flexibility to handle the diverse situations that will be encountered, and the enactment of the original S. 1147 appears to be necessary.

Senator METCALF. The next witness is Mr. Howard Zahniser, executive director and editor of the Wilderness Society.

Mr. Zahniser, we are delighted to have you before the committee.

STATEMENT OF HOWARD ZAHNISER, EXECUTIVE DIRECTOR AND EDITOR OF THE WILDERNESS SOCIETY

Mr. ZAHNISER. My name is Zahniser. My first name is Howard.

I am executive director and editor of the Wilderness Society, a national, not-for-profit, conservation and educational organization with headquarters at 2144 P Street NW., here in Washington.

We are publishers of the quarterly magazine, *The Living Wilderness*, an organization endeavoring to increase knowledge and appreciation of wilderness and to represent the public interest in the preservation and appropriate use of the areas of wilderness in public ownership.

It is a privilege to be invited to testify at this hearing regarding the bill S. 1147 to enable the Secretary of Agriculture to construct and

maintain an adequate system of roads and trails for the national forests, and I wish to thank the committee and its staff for calling the hearing to my attention.

Incidentally, it does seem that the words "and trails" in the title of this bill and in line 5 on page 1 should be left out of the bill so obviously concerned only with roads.

That is just a comment.

My study of the bill and subsequent discussions of it and of proposed amendments have led me to concur with the opinions and recommendations incorporated and so well expressed in the statement already submitted by Executive Director Thomas L. Kimball, of the National Wildlife Federation, and I can thus conserve the subcommittee's time by identifying myself with Mr. Kimball in this statement and briefly adding an emphasis and a recommendation with particular reference to wilderness preservation.

Mr. Kimball says in the fourth paragraph of his proposed statement that—and I quote:

We believe that the construction and maintenance of an adequate system of roads and trails is essential to the multiple use management of national forest lands—

And then he goes on to add—and I quote further:

excepting those areas set aside for special purposes such as wilderness.

I should like to emphasize this exception and to suggest that section 4 of S. 1147 should be scrutinized with this important exception in mind.

Furthermore, I should like to recommend that this measure include a certain positive regard for the value of wilderness wherever it exists in the national forests, and that any extension of roads be subject to a determination that includes a regard for the possible wilderness values of any extensive national forest areas still roadless.

No national forest areas are established for the preservation of wilderness except after careful study of any other wilderness values that may be present in fact or potentially present, and this study includes public hearings, if demanded.

Similarly and with the same logic and the same multiple-use conscience no actual area of wilderness now existing in the national forests should have its wilderness potential destroyed without careful study, including public hearings, if demanded, of its wilderness values.

The governing council of the Wilderness Society has considered this problem and has expressed itself in the following resolution adopted at its annual meeting in 1960:

Resolved. That the council of the Wilderness Society instruct its staff to urge upon the Forest Service and the Secretary of Agriculture a policy, in accordance with the Multiple-Use Act, of giving at least 120 days' public notice and holding a public hearing regarding any proposal or plan to assign any area of national forest land suitable for wilderness classification to any use or uses that would destroy its wilderness potential.

I would recommend that section 4 of this bill S. 1147 accordingly be amended to make clear that the act does not authorize roads within any designated wilderness, wild, primitive, or canoe area and also to provide that any extension of roads into any existing roadless area with wilderness preservation potentials be made only after study, in-

cluding public hearings if demanded, of the roadless area's total values, including its wilderness potential.

With this added recommendation and special emphasis—and I thank the subcommittee for the privilege of urging them here—I should like to reiterate, and conclude with, a concurrence in the statement made by Executive Director Thomas L. Kimball, of the National Wildlife Federation.

Adequate access roads in timber-producing areas are of great importance to a sound wilderness preservation program, for with efficient forestry in our lumbering areas we can better expect to preserve some other areas as wilderness.

Adequate recreation areas with convenience for motorist access are similarly important if we are to maintain wilderness, also in other places.

Wilderness preservation must be part of an overall land and water use program that meets all needs if it is to endure. Thus the access road program represented in S. 1147 can be of wilderness preservation significance as part of an overall sound multiple-use policy and program. To do this well it should recognize the peculiar importance of wilderness.

Thank you.

SENATOR METCALF. Thank you for your statement, Mr. Zahniser, and of course the members of the committee all recognize your interest and sincerity and concern with the wilderness, but for the life of me I can't see how this particular bill would affect wild, primitive wilderness or roadless areas.

It is certainly not designed to infringe upon the wilderness areas. I know that supporters of wilderness are sort of like those who support the Powell amendment, that they want to bring it into every piece of legislation that comes up.

It is certainly not the intent of this committee to infringe upon any of the primitive or wild or wilderness areas that have been established or will be established by this legislation.

Senator JORDAN?

SENATOR JORDAN. Thank you, Mr. Chairman.

MR. ZAHNISER. It is good to hear that statement, Mr. Chairman.

SENATOR JORDAN. I have heard arguments in my own State from groups in support of wilderness areas in our mountains. My question is, How are people going to get to the wilderness if they don't have a road?

I have never been able to find an answer as to how far is a wilderness away from where people can get to it.

MR. ZAHNISER. The road provides the important access to the boundaries of the area that is handled as wilderness. The area that the road penetrates is no longer wilderness. The wilderness is at the end of the road. It begins where the road terminates or it begins at the edge of the road and extends onward until it comes close enough to another road to be changed as wilderness.

The value of the area of wilderness is dependent on access to them, and for that reason we are much concerned with the provision of access roads as provided in this program.

But the extension of access roads into areas that actually are of a wilderness character is something that should be done with some de-

liberation with regard to the way the area of wilderness is being changed. That is the point of my statement.

The assurance of the chairman is good to hear with regard to this.

Senator JORDAN. I am a great believer in maintaining all the wilderness that we possibly can use because it is getting scarcer every day.

Mr. ZAHNISER. Yes, sir.

Senator JORDAN. There is a fine point, though, as to building roads that make wilderness areas more accessible to more people, because when the road stops, you either have got to go in by horseback or walk.

Mr. ZAHNISER. That is right. Or canoe.

Senator JORDAN. And as far as I am concerned, I couldn't walk very far. So I couldn't enjoy much wilderness.

Mr. ZAHNISER. We share your concern of getting to the areas of wilderness, but when we get to them, we want the area that is handled as wilderness and being preserved as wilderness to be wilderness in being.

Senator JORDAN. I thoroughly agree with you on your position on that.

Mr. ZAHNISER. Thank you.

Senator METCALF. Senator Cooper?

Senator COOPER. No questions. Thank you. I enjoyed your testimony.

Senator METCALF. Thank you, Mr. Zahniser.

Our final witness is that great westerner, Mr. Penfold. We are glad to have you before the committee.

Mr. Penfold, director of the Izaak Walton League of America.

STATEMENT OF JOSEPH W. PENFOLD, DIRECTOR, IZAAK WALTON LEAGUE OF AMERICA, WASHINGTON, D.C.

Mr. PENFOLD. Thank you, Senator. It is a privilege to be here.

I like the others will be happy to file my statement for the record and brief it very briefly.

Senator METCALF. Without objection, so ordered.

Go right ahead in your own way.

Mr. PENFOLD. The chairman of the subcommittee in his opening comments, and others, have made it pretty clear that there is no controversy over the need for an adequate system of roads and trails in the national forests for all the purposes which they will serve.

In my statement I give a little background for the record, although I know it is not necessary as far as this committee is concerned, about the importance of the entire outdoor recreation program of the Nation in connection with highway systems in the national forests.

In regard to the amendments offered by the timber industry, it seems to us that as originally proposed, the main thrust was perhaps to upset the 1963 opinion of the Attorney General and the revised regulations of the Forest Service established in June.

We in the league believe that both those actions are sound and are in the long-term public interest and they are subject of an approving resolution adopted by our membership at its 41st annual convention just this past June.

We recognize the complexity of problems in managing public lands, particularly where there are intermingled ownerships, which is so frequently the case in the West. Certainly as a matter of principle we would be the first to insist that public agencies in carrying out their responsibilities with equity to all concerned within the framework of public policy as established by Congress.

We believe that policies now with respect to the national forests are, first of all, that these lands are owned by all the citizens and are to be managed with the overall public interest paramount.

We believe that policy also recognizes that the use of the national forests by anyone for any purpose is a privilege granted by the people as a whole rather than a vested right.

In this connection, Mr. Chairman, there has been a rather long history of efforts made by a variety of national forest beneficiaries to capture an individual right in their privileged use, and we oppose such efforts, whether they are by commercial interests or recreation interests, by groups or by individuals.

In connection with these original amendments, or more particularly as they have been revised by the timber industry, we would say that we, of course, approve the principle of exchanges of easements of comparable value, and we concede that when there is agreement between the applicant for a right-of-way easement, that the Secretary should grant a temporary permit promptly. But we would object to a requirement that the Secretary issue a permit, easement, or other concession to anyone in such a manner as would hamstring him later in negotiating all the equities that are involved, those of other users or the public in general, as well as those of the applicant.

We do not believe that disagreements arising during the negotiations as to relative value should be referred to the U.S. district courts.

In our opinion there is no such right involved or judicial adjudication.

We also want to make the comment, Mr. Chairman, that if not all the problems, at least a lot of the problems involved in the question of compensability would be solved if the Forest Service were to receive the necessary appropriations directly for the construction and maintenance of the national forest road system.

As has been pointed out, the cost would be recovered by the sale of forest products just as they are now, and it would be a lot less time-consuming and costly controversy.

We can agree also that some clarification of section 4 is in order to make it plain that purchasers of national forest timber shall bear only such costs of the road as are appropriate under the "prudent operator rule."

In conclusion, Mr. Chairman, we have a great deal of faith in the Forest Service, and if anything, we think their tendency has been to lean over backward to be fair to industry operating in the national forests, and we anticipate that they will administer these regulations fairly.

If in a year or so of specific experience with the new regulations it can be shown that the Forest Service has not negotiated reciprocal access matters in good faith and equitably in terms of all concerned, including the public, that would be time to take a different and further action.

Meanwhile, Mr. Chairman, we support the enactment of S. 1147.

Thank you.

Senator RANDOLPH. Mr. Penfold, we are appreciative of your statement. We know of the objectives of the Izaak Walton League and I know of the good work done by your organization's members in my State of West Virginia.

The points you have set forth will be helpful to the subcommittee in consideration of this legislation.

Senator METCALF?

Senator METCALF. I have no questions. Thank you, Mr. Penfold.

Senator RANDOLPH. Senator Cooper?

Senator COOPER. Thank you very much for your testimony.

Senator RANDOLPH. Senator Jordan?

Senator JORDAN. No, thank you.

Senator RANDOLPH. Thank you, Mr. Penfold.

Mr. PENFOLD. Thank you, sir.

(The complete prepared statement of Mr. Penfold follows:)

STATEMENT OF THE IZAAK WALTON LEAGUE OF AMERICA WITH RESPECT TO
S. 1147

Mr. Chairman, I am J. W. Penfold, conservation director of the Izaak Walton League of America. The league is a national, nonprofit society of citizens dedicated to the conservation and wise use of America's natural resources heritage—its soil, woods, waters, wildlife, and the opportunity for wholesome outdoor recreation. We appreciate the invitation to appear before this committee today in support of the principles and purposes of S. 1147.

This legislation, Mr. Chairman, would declare congressional policy and provide a mandate for the establishment of an adequate system of roads and trails within and near the national forests, to facilitate proper management and protection and to promote and make possible optimum use of the resources of these great national assets under the multiple-use and sustained yield principle. Moreover, in authorizing the Secretary to issue permanent easements for rights-of-way over national forest and other related lands administered by him, sustained yield management of affected private timber holdings will be encouraged, and the principle of reciprocity of access furthered.

It is not necessary, of course, to inform this committee of the fantastic growth of public interest in outdoor recreation activities. You are well aware of the 3-year study and the report of the Outdoor Recreation Resources Review Commission (Jan. 31, 1962) which was established by Congress in 1958, and in which eight of your colleagues in the Senate and House served so ably. The Commission reported that the evidence pointed to a doubling of population by the year 2000, and a tripling of demand for outdoor recreation. And it can be effectively argued that the demand figure is on the conservative side—for example there has been no short-term estimate of future recreation demand made in the past 18 years that hasn't fallen far short of the mark by the time the target date arrived.

The ORRRC study, report, and recommendations pointed up the great variety of problems which must be solved, if future, far greater public demands and needs for outdoor recreation are to be met. Significantly, ORRRC stated that "The problem is not one of number of acres, but of effective acres—acres of land and water available to the public and usable for specific types of recreation."¹ And, again: "Without access, even the most attractive area is of little use for recreation. This highlights the importance of transportation to outdoor recreation." And, "* * * The layout of our highway network should be geared to recreation as well as other uses."²

In our opinion, Mr. Chairman, S. 1147 in its implementation will contribute greatly to the expansion of outdoor recreation on national forest lands and to a degree on private timberlands where in the judgment of the owner such public use is appropriate and feasible.

¹ P. 49, Outdoor Recreation for America, 1c 62-60017.

² P. 87, op. cit.

Just to make the record complete, Mr. Chairman, let me add that our support of an expanded road system in the national forests for recreation and other purposes, in no way weakens our longtime insistence that natural, primitive, wild, and wilderness areas established in the national forests be kept free of roads and mechanized transportation. On the contrary, we are confident that the effective expansion of access in the great bulk of the national forest system will in fact lessen the pressures for encroachment on areas that in the public interest should be preserved in their natural condition. ORRRC noted this as well.³

Mr. Chairman, we do not believe that there exists any significant divergence of opinion about S. 1147 with respect to the foregoing. It would appear from earlier testimony presented to the committee, however, that the timber industry, or segments of it, have urged that the bill be amended in some substantial and substantive ways. It seems to us that the trust of the original amendments offered might well be to upset the February 1963 opinion of the Attorney General and the revised regulations of the Forest Service established in June.

We believe these actions to be sound and in the long-term public interest, and they were endorsed by our membership in formal resolution at our 41st annual convention, June 15, 1963 (copy attached).

Undoubtedly the problems of managing public lands and providing proper access for all classes of users are complex, particularly in areas where ownerships are intermingled as is so often the case. Certainly, we would be the first to insist that public agencies carry out their responsibilities with equity to all concerned, within the framework of public policy as established by Congress.

We believe that policy includes the charge that these public lands, which are owned by all citizens, are to be managed with the overall public interest paramount. It recognizes as well that use of the national forests by anyone, for any purpose is a privilege, granted by the people as a whole, rather than a vested right. There is a long history of efforts made by a variety of national forest beneficiaries to capture an individual right in their privileged use. We oppose such efforts, whether by recreation or commerce interests, by individuals or group.

We do not believe that the Forest Service and the Department of Agriculture could have done such a good job to date in administering the national forests in the public interest, had its hands been so tied as to make the Secretary virtually helpless in resisting pressures exerted by powerful interested groups. We believe that these pressures will be magnified in the years ahead, not because of selfish demands as such, but because of a burgeoning population, a higher standard of living, and a far greater legitimate demand for the resource values and services which the national forests can provide. We do not believe it is in the public interest to weaken the position of public land administrators to carry out public land management objectives. We believe the original amendments urged by the timber industry would have that result.

In this connection we state forthrightly that we do approve the principle of exchanges of easements of comparable value. We concede that when there is agreement between the applicant for a right-of-way easement and the Secretary that a temporary permit for access be granted properly. But, we would object to a requirement that the Secretary issue a permit, easement, or other concession to anyone in such a manner as would hamstring him in negotiating later all the equities involved, those of other users or the public in general, as well as those of the applicant for access or other privilege.

We do not believe that disagreements arising during negotiations as to relative values should be referred to the U.S. courts. In our opinion there is no such "right" involved for judicial adjudication. Seems to us these are wholly administrative responsibilities.

Mr. Chairman, we cannot refrain from making the comment that most, if not all, of the problems involved in the question of compensability would be solved, if the Forest Service were to receive the necessary appropriations directly for the construction and maintenance of the national forest road system. The costs would be recovered by the sale of forest products, just as they are now—and there would sure be a lot less time consuming and costly controversy.

We can agree that some clarification of section 4 is in order to make it plain that purchasers of national forest timber shall bear only such costs of the road as are appropriate under the "prudent operator rule."

³ P. 86, op. cit.

In conclusion, we wonder if the timber interests are not approaching the new Forest Service regulations with unnecessary apprehension that they will be treated unfairly and inequitably under them. We have a great deal of faith in the Forest Service; if anything, we think their tendency is to lean over backward to be fair to industry operating in the national forests. We anticipate that they will administer these regulations fairly. If in a year or so of specific experience with the new regulations, it can be shown that the Forest Service has not negotiated reciprocal access matters in good faith and equitably in terms of all concerned including the public, that would be the time to take different and further action.

Meanwhile, Mr. Chairman, we support the enactment of S. 1147.

RESOLUTION 18

NATIONAL FOREST ACCESS ROAD REGULATIONS

Whereas the rapidly increasing use of national forests have placed increased demands on the road systems by recreationists, hunters, fishermen, and other resource users; and

Whereas it is the responsibility of the Forest Service under the Multiple Use Law of 1960 to provide the best possible management of all resources dependent on the national forest development road system; and,

Whereas unrestricted access to national forest lands is a prerequisite to their full utilization by the American public; and

Whereas the intermingling of private lands with national forest lands often presents obstacles to such access; and

Whereas the Comptroller General, the Attorney General, and the President of the United States, in decisions and opinions expressed the need for a policy permitting the Federal Government to condition its granting of rights-of-way to private timberland owners within national forests upon receipt of corresponding rights to cross their private lands; and

Whereas changes in regulations on the national forest development road system proposed by the Forest Service to correct the situation were widely circulated among interested national forest users and public hearings were held on them: Now, therefore, be it

Resolved by the Izaak Walton League of America, in convention assembled this 15th day of June 1963, at Cincinnati, Ohio, That the Secretary of Agriculture be commended for his democratic method of handling this issue whereby all were informed and all had a chance to express opinions regarding changes in regulations on roads, and that he also be commended for his prompt revision and modernization of departmental regulations governing development of the national forest road system; and be it further

Resolved, That copies of this resolution be forwarded to the Honorable Orville L. Freeman, Secretary of Agriculture, the Senate and House Committees on Interior and Insular Affairs, Public Works, and Agriculture.

Senator RANDOLPH. Insofar as we are able to determine, at this time, the hearings in reference to S. 1147 are concluded. This doesn't mean that we would not come together again if it seems important to do so.

Also I would suggest, if agreeable with the members of the subcommittee, that if there is additional information the Forest Service would like to supply for the record, or others who might have pertinent information from those witnesses who had planned on being here but were not heard, that this be filed with the subcommittee and included in the record.

Would that be agreeable?

Perhaps we might set the date of August 14 for receiving additional information.

On behalf of our subcommittee, I want to thank all of those who testified, the gentlemen from the Federal Government, the gentlemen from organizations and segments of the industry.

Thank you again. Good morning.

(Whereupon, at 12:25 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.)

(Additional statements received follow:)

U.S. SENATE,
August 14, 1963.

HON. JENNINGS RANDOLPH,
*Chairman, Subcommittee on Roads,
Committee on Public Works,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The opportunity that has been provided by the subcommittee to submit my views on S. 1147, for printing in the record is very much appreciated.

This measure is sponsored by the Department of Agriculture to round out the road authorities of the Forest Service for forest development roads and trails.

This bill has my general endorsement in the form introduced, except for the proviso at the end of section 4. Before discussing this proviso, I wish to briefly outline my general position. First, I am deeply concerned over proposed amendments submitted by certain industry spokesmen. One of these dealing with the so-called prudent operator concept was endorsed by the Forest Service in your July 31 hearing. To accept these amendments would be a step backward. Certainly the Forest Service cannot argue that it needs legislation to do what the present law clearly requires.

The other major aspect of the bill is the easement-granting authority. This is included more to meet the convenience and desires of the industry than for the benefit of any Government program.

The Department has advised you that it seeks a revision to section 4, page 3 of S. 1147, as follows:

"On line 16, strike the words 'from lands tributary thereto' and insert 'covered by the particular sale', and on line 17 change the word 'purchasers' to 'purchaser'."

The effect of this amendment would be to cast into statutory form the present poor timber sale road construction practice known as the prudent operator policy. It would discard the concept of the "prudent land manager" which was originally suggested by the Department.

Today, by the device of timber purchaser constructions, over \$40 million in forest road construction is secured without the elements of sound contracting procedures or appropriate fiscal safeguards.

I believe the committee should institute procedures which will assure that timber operators can continue to build the spur type logging roads needed and the so-called one shot sale roads, but that more of the mainline permanent type roads should be built under normal road contract procedures.

Under the Department's revised language, it would not be foreclosed from requiring the highest possible standard road, and charging it against a single timber sale. It could do this by making a big timber sale and in the process severely limiting the ability of all timber companies to bid. In addition, the original proposal and the Department's amendment, would permit adding substantial amounts of appropriated funds without limit on a negotiated basis to secure the construction of forest roads outside the normal bid procedures.

I see no reason why the Congress should be asked to authorize unregulated spending of an amount of Federal timber income in excess of \$40 million annually without one statutory safeguard against abuse. Therefore, I suggest that the committee instruct the Department of Agriculture as follows: In applying the four methods of financing to be permitted in section 4 (page 3, lines 7-14) that the Forest Service require temporary or spur roads and low cost permanent roads for timber purchaser construction and that it work toward this goal in a manner consistent with authorizations.

Instead of the present and contemplated practice of giving appropriated funds to timber contractors to build roads to maximum economy standards, this procedure be adopted: When the estimated cost of a permanent road exceeds a dollar limit, to be suggested by the committee, based upon normal road practices in the Bureau of Public Roads, a dollar amount of the stumpage equal to the share-of-the-road cost attributable to timber be designated from the timber sale receipts and this, plus the appropriated funds needed, be used to secure the construction of the road by means of a normal road construction contract let at bid.

The timber purchasers, if a qualified bidder for road construction, along with regular road contractors, could bid for the construction of the road. Savings from low bids would be credited as timber sale income on a proportionate basis, thus protecting payments to counties from timber receipts.

In this way the timber purchaser could be relieved of an onerous task, the counties share of revenue would be protected, the vicissitudes of negotiated contracts avoided, and the needed road properly secured at the least possible cost.

Under the procedures I suggest, the timber income would be properly prorated to roads. I am confident that the language of the bill, as introduced, is so broad it would be possible for the Department to implement the procedure as instructed by the committee. Greater use of direct road contracts is a recommendation made to me in the past by organizations representing both labor and management in the road construction business.

In any event, the proviso is in need of amendment to correct a technical defect. The bill provides (p. 3, lines 17-19) that "purchasers of national forest timber and other products shall not be required to bear the part of the costs necessary to meet such higher standard (road)."

In fact, it is not the Government's intention or practice to require the timber purchaser to "bear" either the cost of the road attributable to timber or other activities.

Under present practice, the price of the timber is reduced by the estimated cost of the road the timber purchaser is expected to build. Where a road is already available, stumpage may be appraised, for example, at \$20 per thousand feet. An identical tract of timber which would have attendant road cost of \$5 per thousand feet would be appraised at \$15 per thousand. It is the timber, and ultimately the Government, that "bears" the cost, not the purchaser.

It is my suggestion that the committee strike out all after the word "the" on page 3, line 17, to the end of section 4 and substitute in lieu thereof the following clarifying phrases: "the Secretary is authorized to make arrangements so that only the share of costs attributable to timber shall be chargeable to the timber sold." This proposed change clearly reflects the fact that it is the Federal timber that shall bear the cost of the road needed to effect its removal and the other costs not attributable to timber are to be paid for from other funds.

In some instances the estimates of costs for a road or the estimates of timber volume in the sale do not prove accurate. This is a cause for concern on the part of both the timber purchaser and the Government. On this point I would hope the committee would suggest adoption of procedures which would permit proper and verified adjustments to be made upon a showing in an effort to resolve problems which may occur when actual road construction factors, such as number of yards of dirt to be moved or timber volume estimates, vary significantly from bid basis estimates.

My recommendations both on these points and in general on section 4, would fully meet the industry contention in its proposed amendment. The industry would be required "neither to construct the part of the road necessary to meet such higher standard nor to bear any of the cost thereof."

The Attorney General's opinion troubles some in the industry and on a number of occasions I have attended conferences at which these concerns have been aired. I am fully satisfied that the Secretary of Agriculture will proceed fairly and that the regulations under which it is to be implemented are reasonable. They are equal to similar regulations promulgated in 1950 by the Secretary of the Interior dealing with reciprocal forest access on lands under his jurisdiction. These Interior regulations have never been challenged in court, several hundred temporary and permanent agreements have been voluntarily entered into by timber companies, and during this period the Government and private timber companies have moved into the market over 30 billion board feet of intermingled public and permanent timber from their intermingled timberlands in western Oregon.

Assistant Secretary of the Interior Carver advised me on January 25 that since 1950, in addition to numerous permits of all types that have been issued, 202 reciprocal road agreements were entered into which involved the determination of road values. There has not been one single appeal to the Director of the Bureau of Land Management or the Secretary on the matter of values. This has been achieved by Interior having the Bureau of Public Roads make the road value determinations. Furthermore, the Bureau of Land Management's arbitration procedure has been used less than five times in these 13 years. In other words, direct negotiations have worked effectively and appeals, although possible, have been rare.

Both Secretary Freeman and Assistant Secretary Baker have done a great deal to improve relations with national forest users. Their efforts have been universally applauded and I would urge the committee to afford them the opportunity to continue on this course.

However, I can appreciate that industry spokesmen are concerned and because of this I have carefully reviewed their proposed amendments. If the committee believes it desirable to adopt amendments, I ask that it consider the four substitutes for the industry's amendments I have attached. I believe they protect the public and private interest fully and adequately. These are attached, along with a brief explanation. Should the subcommittee desire that I come before you to testify on them, I shall be willing to do so.

In summary, my position is that S. 1147 needs one clarifying amendment in section 4, plus instructions to the Secretary of Agriculture so that adequate fiscal safeguards will go with the grant of authority.

The timber purchasers should continue to build sale roads under timber contracts. Permanent main-type roads should be built by road contracts let at bid, the funds to be obtained by combining a portion of the stumpage value with appropriated funds. A procedure similar to that used by the Bureau of Public Roads should be adopted which permits adjusting allowances due to defects in road construction estimates or timber volume estimates where timber purchasers are required to build roads as part of a timber contract.

The courtesy of the subcommittee in considering the points discussed in this letter is appreciated.

Sincerely yours,

WAYNE MORSE.

SUGGESTIONS BY SENATOR WAYNE MORSE ON FOUR AMENDMENTS TO S. 1147
PROPOSED BY THE SPOKESMEN FOR THE LUMBER INDUSTRY

1. Senator Morse proposed substitute proviso No. 1 for addition to section 2 in lieu of the language suggested by the National Lumber Manufacturers Association:

"The Secretary may not require as the consideration for any such easement, the granting to the United States of rights greater than substantially equal value unless he compensates the grantor, at fair market value, for the difference in value."

Under the authority contemplated by the bill, the Secretary of Agriculture will be able to issue easements directly. Today, upon his request the Secretary of the Interior issues the easement. The Secretary of Agriculture under regulations issued June 10 intends to pay fair value for rights received.

For example, in a case where the applicant only needed to cross 1 mile of national forest, adoption of the proposed industry amendment would absolutely limit the Government's attaining reciprocal access in a situation where it needed access over 2 miles of private land to immediately harvest insect-infested timber. The applicant would get his needed 1 mile while the Government would still have to condemn or negotiate for the additional 1 mile.

My amendment assures that the Government gets what it needs—2 miles of access—and the private owner what he needs—1 mile of access. It also assures that the private owner will be compensated for the difference in value for the additional mile at the fair market value.

2. Senator Morse proposed substitute proviso No. 2 for addition to section 2 in lieu of language suggested by the National Lumber Manufacturers Association:

"While application for an easement is pending, upon request by the applicant and when the Secretary determines that the public interest will be benefited, the Secretary shall issue a temporary permit to cross national forest lands."

The industry language proposes that there shall be no discretion lodged in the Secretary to determine whether a request is in the public interest. The NLMA's second proviso, plus their third, would permit any company not only to construct a road across national forest land immediately upon filing an easement application, but also would automatically give it a compensable interest.

The result would be not only to overturn the Attorney General's decision but also to completely eliminate the Secretary's ability to regulate private use of the national forests.

My amendment would meet the central need timber companies have asserted—prompt access—but would continue the Secretary's public interest responsibility.

3. Senator Morse proposed substitute proviso No. 3 for addition to section 2 in lieu of the language suggested by the National Lumber Manufacturers Association:

"Any such permit may provide, if the Secretary determines it to be in the public interest, that the permittee shall be entitled to recover the excess over his proportionate share of the construction cost of the road under such conditions and in such amounts as the Secretary shall determine."

The industry amendment is both retroactive and prospective. It proposes the totally improper concept of automatic compensation to a lessee for a facility placed on the lessor's lands, but without affording the lessor the opportunity to require that it be reasonably useful to him.

In addition, it is contrary to a major plank in the industry's own statement of principles presented to Secretary Freeman when the road regulations were being drafted. The industry stated then, "A party should be required to share in the cost of a road only to the extent it is constructed to a standard adequate to serve his particular needs."

My proposal is not retroactive. It would provide for the future that compensation could be paid for a road constructed by a permittee by the same means as is presently used. Where there is general agreement in advance on such basic items as route, standards, costkeeping, and interim road use, the permittee would be entitled to proportionate compensation.

The Government would be assured that the facility would be useful and the permittee would be better assured that he would truly receive equitable compensation.

4. Senator Morse proposed substitute proviso No. 4 for addition to section 2 in lieu of the suggestion by the National Lumber Manufacturers Association that dispute over value be resolved in the U.S. district courts. (The NLMA did not suggest specific language.)

The language that I suggest is patterned after that in the Interior Department regulations on forest road access issued in 1950 and joint Agriculture-Interior powerline rights-of-way regulations issued in 1963.

It provides for a binding determination one step below a court review but by a procedure designed to permit fair and expert review. The language suggested as a final proviso of section 2 is:

"Where the Secretary receives a road or easement in return for a grant by the United States of a road or easement and he and the grantor, having agreed on all other terms and conditions of the grants, are unable to agree on the reasonable value thereof, such issue may be decided by a panel of three arbitrators consisting of a designee of the Secretary, a designee of the grantor and a third member appointed by such designee. In case the two panel members are unable to agree on the third member, the judge of the U.S. district court having jurisdiction over the capital of the State in which a majority of the road or easement lies shall designate the third member. The decision of the panel shall be reached by a majority vote of its members and shall be final and binding on all parties to the proceedings. The Secretary shall have the authority to issue rules and regulations governing the arbitration procedure."

Mr. Bernard Orell summed up the industry concerns on pages 14 and 15 of his statement. Four went to section 2 of the bill. One was a plea for authority to the Secretary to be able to grant easements; the other three were concerned with compensation.

This fourth amendment could be adopted either as an addition to the three substitutes for the National Lumber Manufacturers amendments or as a substitute to all three. It provides for a positive and unbiased settlement of the financial issue after the Government and applicant who seeks to cross Government land resolve other outstanding issues surrounding either the issuance of an easement.

It applies a concept tried and effective today in the Departments of Agriculture and Interior.

U.S. SENATE,
August 14, 1963.

HON. JENNINGS RANDOLPH,
*Chairman, Subcommittee on Roads,
Senate Committee on Public Works,
Washington, D.C.*

DEAR SENATOR: I regret that I was unable to come before your subcommittee to express my views on S. 1147, the bill to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national

forests. I strongly support this legislation as submitted by the Secretary of Agriculture.

This legislation does several important things. First, it brings together in one act the various authorities describing the methods by which forest roads and trails will be constructed and maintained. Inasmuch as the Public Works Committee has the responsibility for authorizing the appropriated funds to carry out this program, and does so biannually, this bill, if enacted, should improve the ability of the committee to coordinate what is done via direct appropriations, and what is done through cooperative and timber sale methods, for securing needed roads on national forests.

A second thing that the bill does is to provide that these roads will be constructed to meet maximum economy standards. I hope that your committee will endorse the provision that would require that the Forest Service be guided by the policy of a prudent land manager.

Spokesmen for the lumber industry have urged the committee to adopt several amendments, and spokesmen for conservation organizations have indicated opposition to these amendments, which would have an effect upon a decision rendered by the Attorney General in February 1962. In my opinion, the Attorney General's decision is reasonable, as are the regulations promulgated by the Secretary of Agriculture on June 10 to implement that decision. There may be some problems which may occur in effectuating agreements under these regulations, but it is too early to reach such a judgment.

You may be interested to know that the policy being applied on the national forests now on the question of reciprocal right-of-way agreements is almost identical with the policy which was adopted by the Department of Interior in 1950 for over 2 million acres of very important Federal forest lands in western Oregon. Many road agreements have been entered into on a voluntary basis during the past 12 years, and the administration of these public lands and private lands has been advanced.

I hope that your committee will act favorably on the bill submitted by the Secretary of Agriculture, and if I can supply further facts or information, please feel free to call upon me.

Sincerely yours,

MAURINE B. NEUBERGER, *U.S. Senator.*

SAN FRANCISCO, CALIF., *August 13, 1963.*

Senator JENNINGS RANDOLPH,
*Chairman, Subcommittee on Public Roads, Committee on Public Works, Senate
Office Building, Washington, D.C.:*

Regarding S. 1147 section 4, Western Lumber Manufacturers officers and directors urge that national forest timber not be charged for more road cost than needed to remove timber in any particular sale. Higher standard road needs should be met through supplementation with appropriated funds. Please make this part of record.

GEORGE A. CRAIG,
Secretary-Manager, Western Lumber Manufacturers, Inc.

OLYMPIA, WASH., *August 14, 1963.*

Hon. JENNINGS RANDOLPH,
*Chairman, Senate Subcommittee on Public Roads,
Senate Office Building, Washington, D.C.:*

This is to register my full support of Senate bill 1147 and proposed amendments now before the subcommittee on roads of the committee on Public Works U.S. Senate.

BERT L. COLE,
Commissioner of Public Lands.

AUGUST 19, 1963.

TESTIMONY OF CONGRESSMAN DON H. CLAUSEN, FIRST DISTRICT OF CALIFORNIA

Mr. Chairman, I wish to thank you for affording me this opportunity to present a few remarks on the very important question before this committee—the question of right-of-way policy on Forest Service lands.

For 7 years I served as a member of the board of supervisors in Del Norte County, Calif. It was during this time that I enjoyed the opportunity of observing firsthand the problems of right-of-way for access roads to publicly owned lands.

The county of Del Norte is plagued with the fact that approximately 75 percent of the available land area is owned by the State and Federal Governments. With the remaining 25 percent constituting the tax base, upon which the local units of government must depend for revenue, you can recognize the importance of access roads to Forest Service lands and their effect on the economy of the area. Further, the local schools and county government share in the receipts of Forest Service timber sales and thus are dependent upon continued timber sales for school needs and road improvements. This is particularly critical in this county due to its limited tax base. The counties of Humboldt and Mendocino of my district are similarly affected. I merely provide you with this background to emphasize the extreme importance of access roads to the economic well-being of this county and the area in general.

Many of the local plywood plants, sawmills, and related industries are dependent almost entirely upon the sale of Forest Service timber, having depleted their own timber resources. A continued flow of this resource is absolutely essential to the economy because it is truly the major industry of the area. Where it is not the responsibility of Government to determine who survives in this free competitive system of ours, it most certainly must be the objective of the responsible land management agency to—

1. Accurately inventory the resources available;
2. Consider and recommend the proper cutting cycle;
3. Determine the allowable cut under a sustained yield program;
4. Implement proper forest management and conservation practices to assure a guarantee of this vital resource to the counties involved from this day forward.

To accomplish this objective, a well-coordinated program of ingress and egress to these lands, giving full and proper consideration to all people concerned, must be developed.

In reviewing S. 1147 and H.R. 1900, authored by the chairman of the House Public Works Committee—of which I am a member—one concludes that the basic intent of the legislation is to accomplish this purpose. However, there are some factors that must be brought to the attention of this committee in order to adequately protect the interests of individuals and business owners of lands contiguous to federally owned lands.

In order to provide this committee with an example of some of the problems involved, I take this opportunity to insert a case in point.

The following comments are excerpts from a letter written to me by Mr. James R. Hooper, attorney for Mr. Brimm. The information contained is completely factual and I can vouch for its accuracy because I was a member of the Del Norte County Board of Supervisors at the time:

Re U.S. Forest Service-Roy Brimm (condemnation of right-of-way).

HON. DON H. CLAUSEN,
*Cannon House Office Building,
Washington, D.C.*

DEAR DON: This will confirm our conference with you in my office on Tuesday, June 4, 1963.

For the record, let us review briefly the chronological developments in connection with this proposed Forest Service condemnation.

This entire controversy commenced in the fall of 1960, at which time the U.S. Forest Service requested the Del Norte County Board of Supervisors to condemn a portion of real property situated in the Big Flat area of Del Norte County, Calif., and owned by Roy Brimm. The object of this condemnation was to acquire a right-of-way for the purpose of removing several million board feet of timber which the Forest Service alleged would be put up for sale. However, it is significant to note that the Forest Service intended for the Del Norte

County Board of Supervisors to condemn Mr. Brimm's property, obtain the right-of-way, and then transfer the right-of-way to the U.S. Forest Service.

Commencing in 1961, we began to attempt negotiation with the U.S. Forest Service in an effort to arrive at a reasonable formula to determine the fair value of the right-of-ways sought by the Forest Service.

Several hearings were had before the Del Norte County Board of Supervisors, with representatives of the Forest Service and Mr. Brimm presenting evidence on both sides of the controversy.

The record will show that your position on the propriety of the board of supervisors acting in this situation was identical to the position which we put forth on behalf of Mr. Brimm.

1. At no time during the past 3 years that this matter has been under consideration has Mr. Roy Brimm been anything but cooperative, and he has at all times stood ready and willing to negotiate on a reasonable basis with anyone interested in obtaining a right-of-way over his property.

2. In my appearances before the Del Norte County Board of Supervisors on behalf of Mr. Brimm, this was our position:

"The Federal Forest Service seeks to use the facilities of the Del Norte County Board of Supervisors to institute condemnation proceedings to take Mr. Brimm's private property in the Big Flat area of Del Norte County—not for a county road, as the county's proposed resolution states, but for the purpose of turning the property over to the Forest Service for a timber access road. In other words, the Board of Supervisors will be acting only as an instrumentality of the Forest Service to expedite the seizure of private property. It is the Federal Forest Service that is the promoter of this condemnation action.

"Why the Forest Service does not exercise its own powers of condemnation through the Federal courts has not been adequately explained. The Federal procedure is clear and well established. Yet a very dangerous and far-reaching precedent will be established if the board of supervisors consent to act as the condemning agency for the Federal Government.

"In this case, the Forest Service has offered Mr. Brimm less than \$300 for the right-of-way property. Yet it is estimated that over 100 million board feet of private timber stands behind Mr. Brimm's property. A right-of-way charge of 25 cents per thousand board feet for all private timber moved across the Brimm property is representative of the very minimum loss which would be suffered by Mr. Brimm if his property is condemned without just compensation.

"Since men began to think, the rights of a man to his private property have ranked high on their list as curbs on tyrants and dictators. For example, the 1776 Virginia bill of rights, which, incidentally, served as the model of our own Bill of Rights, put property rights before freedom of speech and religion.

"If a private person's property must be taken by a governmental agency, then it is absolutely essential that the taking be:

"(1) By the proper governmental authority:

"(2) For a public, as opposed to a private, use;

"(3) For just compensation: and

"(4) Only when all efforts at negotiation have failed and the public need requires condemnation.

"In this particular instance, Mr. Brimm has offered to permit the Federal timber to be moved across his property without any charge whatsoever. He is even willing to build the road, subject to some provisions for amortizing the cost in accordance with past practices of the Forest Service. The only request that Mr. Brimm has made has been the right to charge a reasonable right-of-way fee for the removal of private, not Federal, timber across his property. But he is even willing to go further, and that is to sell the property outright to the Forest Service for a fair and realistic price, based upon the going market price for similar property in the Big Flat area."

Sincerely,

JAMES R. HOOPER.

In conclusion, Mr. Chairman, I would like to submit some reasons for the enactment of H.R. 1900 and S. 1147. However, amendments are necessary to remove some of the objections:

1. Allow a permanent right of access to private timber growers for intensive management and protection of investments.

2. Allow private timber growers prompt access to their property similar to the right of the Government.

3. Provide that timber growers will be fairly compensated for property rights taken by the Government.

4. Provide that timber products will not be forced to bear alone the cost burden for roads to be used by the public and for other multiple uses.

5. Limit payment for easements to fair market value as a safeguard against "holdups."

6. Make private road and bridge investments on national forest lands compensable.

7. Protect timber purchasers from having to construct superhighways in order to qualify as a purchaser.

8. Review the present formula and regulation for negotiations with property owners, giving proper consideration to right-of-way access fees currently practiced in the area by industry.

In view of the far-reaching consequences and the complexities involved, I would urge the members of Public Works Committees of the House and Senate to consider holding a subcommittee hearing at an appropriate location to review the California access road problems. In this way, the committee members could participate also in select inspection trips to the areas involved. Congressman Johnson of California and I represent areas that contain 92 percent of the timber and timber products industry of the State. An inspection trip to his district would provide on-site evidence and information to committee members in this predominantly pine-growing section. A visit to my district would acquaint the members with the problems of the fir and redwood regions. The terrain and heavy winter rains must be given careful consideration.

The people of my district are most appreciative of the time and attention you have given to our problem.

DON H. CLAUSEN.

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., July 31, 1963.

Senator PAT McNAMARA,
Chairman, Senate Public Works Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR McNAMARA: Enclosed is a copy of the statement of the American Farm Bureau Federation to the Subcommittee on Public Roads of the Senate Public Works Committee with regard to S. 1147.

We believe this bill, with the suggested adjustments, will be fair and equitable; that it will give the Forest Service authority to grant permanent easement over public lands and protect private landowners by law.

We urge your favorable consideration of this measure.

Yours truly,

JOHN I. TAYLOR,
Assistant Legislative Director.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION WITH REGARD TO S. 1147
BY JOHN I. TAYLOR, ASSISTANT LEGISLATIVE DIRECTOR

Senate bill 1147 introduced by the Honorable Jennings Randolph (by request) is a bill to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes, and a bill in which Farm Bureau is quite interested.

We appreciate the opportunity to present our views on this proposed legislation to the committee on behalf of our 1,607,505 farm and ranch family members in 49 State Farm Bureaus and the Puerto Rico Farm Bureau.

This bill is designed primarily to provide a means for the Forest Service to grant permanent easements over forest land to private landowners. These landowners are foresters and lumber companies and ranchers and farmers, many of whom are our members, who need access to their lands and must pass over forest lands to get there. While we are interested in forestry as such, we are also interested in this latter group who need the same opportunity and protection.

The bill would (1) authorize the Secretary of Agriculture to issue permanent easements (an authority he does not now have); (2) allow cancellation of easements after a period of 5 years of nonuse; (3) authorize the construction and maintenance of roads; (4) provide for recording of easements in the

county where lands are located; (5) require road users to pay a proportional share of cost of maintenance and reconstruction; and (6) provide for payment for easements to private owners.

We believe such legislation is necessary and should be enacted both for the protection of the United States and the private landowners. It will need some adjustment in language to prevent the domination and final determination by the Forest Service but with these adjustments can work to the benefit of all parties.

At the annual meeting of our federation held in Chicago, Ill., on December 14, 1961, our voting delegates adopted the following policy.

"We favor maintenance of a privately owned, sustained-yield forest industry with the assistance of State and Federal Governments, each in its respective role, in essential supplemental services including fire protection, access roads, insect and disease control, and forestry research and education."

We would suggest consideration of providing in section 2 that (1) the value of an easement across private lands required by the Government as a condition for access should not exceed the fair market value of the easement requested, (2) immediate access should be provided for the private owner, and (3) the determination of fair market value should be subject to review by the courts or court-appointed commissions.

We believe the passage of this bill with these amendments will assure a better tenure and access than has heretofore been available; that the Forest Service will have ample authority and that private interests will be better protected by law.

With these safeguards, we urge the favorable consideration of S. 1147.

CITY OF SEATTLE,
WATER DEPARTMENT,
Seattle, Wash., July 22, 1963.

HON. JENNINGS RANDOLPH,
Chairman, Senate Subcommittee on Public Roads,
U.S. Senate, Washington, D.C.

MY DEAR SENATOR RANDOLPH: Recently, a member of the staff of the Senate Subcommittee on Public Roads, Mr. Richard Royce, spent a day with representatives of the city of Seattle touring the Cedar River watershed. Mr. Royce was seeking information relating to access problems within the national forests as background for your committee's complete understanding of S. 1147.

We wish to register our full support for S. 1147 and the amendments to section 2 of the bill offered to your committee by Mr. Bernard L. Orell on June 11, 1963.

The city of Seattle has managed the Cedar River watershed as the primary source of water for the residents of Seattle and the surrounding communities since 1901. The watershed contains approximately 91,000 acres of land, 73 percent of which is owned by the city of Seattle, 23.5 percent of which is national forest lands administered by the U.S. Forest Service, and the remainder is owned by private parties, but under contractual agreement for acquisition by the city. In the upper reaches of the watershed, the land pattern is checkerboard in nature, with alternate sections being owned by the city and alternate sections being in national forest ownership. During the period of 1943 to 1960, the private parties constructed or reconstructed 98.6 miles of high-standard logging road, 79 miles of which is located on city and private lands, and the remainder is located on national forest lands.

In late 1961, the Forest Service, certain private companies, and the city reached agreement with respect to maintenance and use of the existing roads within the watershed and with respect to construction, maintenance, and use of new roads. We also agreed upon a management plan, agreed to be necessary for the preservation of the quality of the city's water. Moreover, the Forest Service and the city stated their mutual intentions to carry out a land-exchange program which would ultimately involve exchange of city lands owned outside the watershed for all national forest lands located within the watershed. Thus, the city of Seattle eventually would obtain fee ownership to all lands within the boundaries of the Cedar River watershed. A copy of the Cedar River watershed cooperative agreement and a map showing the ownership of the land and timber, as well as the ownership of the presently existing roads, are attached to this letter for your information and use.

One of the most difficult obstacles in the way of reaching a common ground for the cooperative agreement was the inability of the U.S. Forest Service to make reciprocal access grants. The city and the private parties finally accepted a permit to use the road system constructed by the private parties on national forest lands. This permit is subject to termination in the discretion of the Chief, Forest Service. The Forest Service, however, insisted upon and was granted a permanent nonexclusive easement to use portions of the road system located on private and city lands.

We believe that the city of Seattle will be in the Cedar River watershed at least as long as the Forest Service, and should, in a like manner, receive permanent grants across national forest lands in order to assure perpetual access for proper management of all the lands within the watershed. S. 1147 would vest such granting authority in the Secretary of Agriculture.

With reference to the amendments to section 2 of the bill, we believe that any conditioning of access should involve an exchange of substantially similar values. It would be most unfortunate if an applicant for a short bare land right-of-way across national forest lands were denied access unless and until such applicant agreed to permit use of many miles of existing high-standard road. Referring again to the Cedar River watershed, the Forest Service would have had a tremendous imbalance of power had we been unable to extend the existing road system across one section of national forest lands in the upper reaches of the watershed unless we agreed to grant access across the entire existing road system.

Moreover, we believe that access grants across the national forests should be made immediately upon request. Our experience as a manager of timber resources convinces us that access should be made available immediately, and that the terms and conditions relating to the sharing of costs and so forth can be worked out in due course. The need for access should in no instance be used as a bargaining tool in access negotiations.

We certainly support the principle that any person or any public or private corporation who places improvements on the national forests be deemed to have a compensable interest in such improvements. This is a matter of simple equity. You will be interested to know that the city of Seattle has consistently recognized investments which the private parties have made in Cedar River roads. As a matter of fact, at the time we entered our cooperative agreement with the Forest Service, in excess of 70 percent of the road system was constructed by the private parties upon city of Seattle lands. Because these roads had been constructed, reconstructed, maintained, and improved by the private parties at their expense, the city recognized that the entire investment should be recovered by the private parties, and not in part by the city of Seattle. Therefore, when the Forest Service purchased an interest in such road system, the payment was made to the private parties, and no part of it was made to the city of Seattle. The Forest Service, on the other hand, gave no recognition to the nearly \$300,000 cost of some 19 miles of roads which had been built by the private parties on national forest lands. They insisted upon, and received, a perpetual right to move national forest timber over such roads without paying any portion of the construction costs.

In our opinion, S. 1147 and the above-mentioned proposed amendments will do much to facilitate equitable exchange of access rights within the exterior boundaries of the national forests. We respectfully urge the committee's favorable consideration of the bill, and the amendments.

Very truly yours,

J. RAY HEATH,
Superintendent of Water.

NATIONAL ASSOCIATION OF COUNTIES,
Washington, D.C., August 7, 1963.

HON. JENNINGS RANDOLPH,
Chairman, Senate Subcommittee on Roads,
U.S. Senate, Washington, D.C.

DEAR SENATOR RANDOLPH: In my capacity as secretary of the National Association of Counties' Recreation Committee, I welcome this opportunity to forward their views to you on S. 1147, which relates to the construction and maintenance of an adequate system of roads and trails within the national forests. The National Association of Counties (Naco) is a nonprofit organization which represents the county governments located across the United States.

Naco supports the basic provisions of this bill; however, we strongly urge your subcommittee to clarify section 4 in a manner which would provide for the construction of forest roads and trails to the "maximum economy" standard which may be required, provided that the timber purchasers bear only the cost of a "prudent operator" road for that particular sale and that the additional cost of these higher standard roads be borne through appropriated funds of the Federal Government.

Last week, July 28-31, 1963, 2,500 county government leaders assembled in Denver, Colo., for Naco's annual conference. After a thorough discussion, the following policy statement was adopted:

"Forest access roads.—We strongly support prompt implementation of the program objectives outlined in the long-range program for the national forests. Federal participation, by increased appropriations and authorizations in the construction of forest roads should be immediately accelerated, with road construction by timber purchasers being directed toward only those roads required for the flexibility in their operations. The increased construction of forest access roads, by Federal appropriation will result in a better, more permanent road system at a lower cost, more opportunity for competitive bidding by small timber operators, increased access for forest fire protection, recreation, and other multiple uses, and increased revenues for State and local governments.

"The National Association of Counties further recommends that these forest access roads should be constructed to the appropriate standard which will permit maximum economy in harvesting timber from lands tributary to these roads and for maximum utilization of the other resources of these forest lands; provided That the cost of these higher standard roads, to the extent that they exceed the standard required of a 'prudent operator' for that particular sale, shall be borne through appropriated funds of the Federal Government and not by the timber purchaser."

During this meeting, the county government leaders expressed primary concern that under the present procedures we are not getting the kinds of roads necessary to administer the national forests for multiple-use purposes such as outdoor recreation, range, timber, watershed, wildlife, and fish purposes.

Too often in the past, these roads have been build only to strict "prudent operator" standards, with the result that many roads are but a single lane with no permanent surfacing, and only temporary bridging.

In 1958, the Forest Service reported to your committee that of 149,649 miles of forest access roads then in service, 112,653 miles were of "primitive standards and classed as inadequate for present or future traffic."

The need to develop the national forests for intensive recreation usage was clearly apparent from the many expressions of these "grassroots" leaders regarding the rapidly expanding public pressures for all types of outdoor recreational opportunities. This will be particularly true in our own State of West Virginia. The key to meeting these leisure time requirements is an adequate system of forest access roads built to multiple-use standards.

Through your leadership, the authorizations for these types of roads was substantially increased last year from a level of \$40 million per year to \$50 million, \$70 million, and \$85 million, respectively, for each of the succeeding 3 years.

County government hopes that these authorization levels will continue to increase in the future, since these funds provide the means of accelerating the total mileage of these roads which can be constructed, without placing an unnecessary burden on the timber purchasers.

Within West Virginia, I note that the Forest Service plans to construct 380 miles of multiple-use purpose roads during the next 10 years. While this construction will be helpful, many of us hope that this proposed construction program can be sharply expanded, since the opening up of untapped recreation areas will provide a vitally needed economic boost for our State.

I appreciate this opportunity to forward to you the National Association of Counties' views on S. 1147.

Sincerely yours,

RICHARD SHELTON,
Executive Secretary, West Virginia Association of County Officials.

NORTHERN CALIFORNIA SUPERVISORS ASSOCIATION

TIMBER ACCESS ROADS IN THE U.S. FORESTS

Submitted and Approved October 1962, by Ralph Hollinger, President

The following is an excerpt from the minutes of general meeting, October 12 and 13, 1962, Richardson Springs, Calif.:

"Highways and roads: Floyd Giles reporting—

"The report of the Northern California County Supervisors Timber Access Road Committee was given by Supervisor Wagoner. After some discussion the report was unanimously adopted.

"George Gaekle read the Timber Access Road Committee report again at the general meeting and it was unanimously approved."

REPORT OF NORTHERN CALIFORNIA SUPERVISORS ASSOCIATION TIMBER ACCESS ROAD COMMITTEE

In February 1962, the Northern California Supervisors Association adopted a resolution which stated in part that the association "is concerned about the problem of timber access roads in our national forests" and "there is not unanimous agreement that these access roads are being constructed to prudent-operator standards" and that "arrangements be made to confer with the objective of resolving the question of prudent-operator standards on timber access roads."

The resolution further designated Norman A. Wagoner, supervisor of Shasta County, chairman; with James Stearns, supervisor, Modoc County; Donald D. Chamberlin, director of public works of Shasta County; Al A. Powers, road commissioner of Siskiyou County; and William D. McIntosh, road commissioner, Lassen County, as committee members. Unfortunately Mr. Stearns' schedule has not permitted attendance at the many meetings held and, therefore, these remarks are the conclusions and recommendations of the remaining four individuals.

This committee reviewed the basic law from which the county interest stems; the law dating back in its present form to 1908 which provided for 25 percent of all moneys received "to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the counties." There are other laws which affect, indirectly, the economy of the timber counties; the enactment of the Knudsen-Vandenburg Act, the 10-percent act providing for roads and trails funds within the national forests, for instance, and others.

The committee resolved at an early date to concern itself entirely with the provision of the law which pertained to the direct economic effect of the operation of the national forest and that was through section 500, title 16, United States Code, providing for the 25-percent return to the counties for the county roads system and elementary schools within the county. The resolution provided the authority for the committee to thoroughly investigate the question of the prudent-operator concept established by the Forest Service in the enactment of policy concerning the construction of roads.

It should be stated at the outset that very early in the deliberations of the committee there was unanimous agreement that the basic concept of multiple use within the national forests is proper and should be encouraged and should further be implemented to any reasonable degree possible by those interested and by the Forest Service. We find the management of the national forests at all levels to be in excellent hands and throughout the course of our study, we received only the very best in cooperation with Forest Service personnel. We believe that much of the criticism of the Forest Service by the timber industry is in its failure to recognize the multipurpose objectives of the U.S. Forest Service.

The initial meeting of the committee and invited participants, was held on March 21. Full day field trips were held on July 6 and on August 30. Committee meetings were held on October 3 and 9. A meeting with Dr. Edward C. Crafts in Phoenix on January 25, 1962, was arranged—actually prior to the formation of the formal committee—and on October 5, 1962, the full committee met with Arthur W. Greeley, Assistant Chief, Forest Service, in San Francisco. Counties represented at these various meetings included supervisors and road commissioners from Shasta County, Siskiyou County, Lassen County, Tehama County, Glenn County, and Mendocino County. The timber industry was represented at various of the meetings by the Western Pine Association, Glenco Forest

Products, Crane Mills, Inc., Ralph Smith Division of Kimberly-Clark, Inc., Humboldt Fir, Inc., Diamond National, Inc., Shasta Forest Products Co., Crawford Lumber Co., U.S. Plywood, Inc., Lorenz Lumber Co., and Paul Bunyan Lumber Co.

The Forest Service was represented at various times by three forest supervisors and their forest staff members as well as representatives from the regional office in San Francisco. All of those who contributed in the study were especially well qualified by their positions and experience to present their views on a rather complex question. It should be noted that the supervisors committee was represented heavily by the road experts at the county level, the county road commissioners.

These many hours of study and deliberation lead us to the conclusion that in some cases the road standards, road specifications, and construction methods established and/or required by the U.S. Forest Service are such that the cost of construction is higher than necessary for the economical harvest of timber. The reasons for these excessive costs are manifold and in themselves are not easy of resolution.

1. It is the committee's conclusion that drainage requirements are excessive in many cases. Not enough recognition is given to the proper sizing and/or location of these culverts, nor of recognition given to the design life or service of the road itself, nor to the alternate of maintenance versus first cost.

2. We conclude that in many instances, clearing, grubbing and cleanup work is excessive to actual timber management requirements.

3. Too much emphasis has been placed on the economic value of horizontal and vertical alinement. In actual practice and in consideration of the actual operating procedures of the timber operator, the theoretical advantages of geometric standards is not borne out, and that while the exhaustive studies and conclusions which are represented in the report of Burn-Nelson-Googins (1947), are invaluable in establishing engineering criteria, these criteria must be tempered by the industry's method of actually doing business.

4. There would appear to be many instances of road standards based on multiple-use requirements. This point seems, to us, to be major weakness in the economic studies and conclusions which the Forest Service ascertains in their economic analyses. We do not think that the supplemental funds provided in many of the timber sales are adequate for the multiple-purpose uses for which the road is designed. We would highly recommend that the Forest Service seek an adequate formula for establishing the multipurpose characteristics of a particular road and fully supplement the timber sale with funds for these other uses. We recognize the problem of a shortage of supplemental funds and believe the Northern California Supervisors Association should exert every effort to assist and support legislation providing for adequate supplementation.

5. The contract documents, in themselves, leave much to the discretion of the Forest Service. This, we think, induces fear and insecurity on the part of the timber operator and may lead to an overly conservative approach in their bidding and in the working relations between the timber operator and the Forest Service.

In the consideration of recommendations which this committee makes, it might be well to note the definition of a prudent operator:

"Characterized by or manifesting prudence, specifically (a) capable of directing or conducting oneself wisely and judiciously, (b) cautious, circumspect or discreet, as in conduct, choice of ends, or business management; not rash or ill advised; highly sensible."

We believe that the timber operators who were invited to join with the committee and who otherwise took part in our review of the problem, are prudent. In the committee's consideration, then, we are inclined to lean heavily on the assertions of the timber operator pertaining to the economics of his industry. We believe the timber operator and the timber industry as represented by the operators who contributed to this committee to be sound and prudent, who know their business, and yet who find fault with much in their day-to-day relations with the Forest Service. We feel that this in itself is an indicator of an unhealthy relationship between the timber industry and the managers of vast national resources, the U.S. Forest Service.

We, therefore, recommend to the Northern California Supervisors Association that the Forest Service be encouraged to thoroughly investigate the suggestions recommended in this report.

Further, in the strongest possible terms, we recommend an Appeals Board be established by the U.S. Forest Service at the forest level; that this Appeals Board be established for the purpose of hearing complaints and grievances of the timber operator; that this Appeals Board should consist of a representative of the U.S. Forest Service, of the timber industry, of county government, a highly qualified individual in forest engineering from the State university, and a local lay citizen; that this Appeals Board should act in an advisory capacity, passing its recommendations to the regional forester.

It is our opinion that this Appeals Board will provide a much needed review board for mutual problems of the Forest Service and of the timber industry as represented by the individual operator. We are strongly of the opinion that this highly regimented, thoroughly manualized, and completely sincere Federal bureau must have an outlet to hear and act upon legitimate grievances for those doing business with the Forest Service.

We finally recommend that the Northern California Supervisors Association accept this report and recommendations contained herein.

NORMAN A. WAGONER, *Chairman.*

CALIFORNIA STATE CHAMBER OF COMMERCE,
San Francisco, Calif., June 6, 1963.

Senator JENNINGS RANDOLPH,
Chairman, Senate Public Roads Subcommittee,
Senate Office Building, Washington, D.C.

DEAR SENATOR RANDOLPH: It is our understanding that your subcommittee will hold a hearing on S. 1147 on June 11. The California State Chamber of Commerce sincerely appreciates efforts that are being made for clarification of congressional policy to confirm right of access across national forest lands. We endorse the principle of S. 1147, if amended in several respects.

The chamber's board of directors, following considerable study by our state-wide natural resources committee, agreed to support S. 1147 (H.R. 1900). We believe, however, that amendments are necessary to provide—

1. That charges for easements not exceed fair market value, subject to court review.
2. Prompt access for property owners.
3. That users shall not bear more than their equitable share of road costs.

We feel that this problem is sufficiently important to warrant the holding of additional public hearings in the West since the Federal lands involved are primarily located in the Western States. Most private landowners and purchasers of Government timber who are affected by the access problem will not be able to present testimony unless the hearings are held locally. We are certain that the committee's deliberations would be benefited thereby.

Sincerely,

CLARK GALLOWAY, *General Manager.*



88TH CONGRESS
1ST SESSION

S. 1147

IN THE SENATE OF THE UNITED STATES

MARCH 19, 1963

MR. RANDOLPH (by request) introduced the following bill; which was read twice and referred to the Committee on Public Works

A BILL

To enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Congress hereby finds and declares that the con-
4 struction and maintenance of an adequate system of roads
5 and trails within and near the national forests and other
6 lands administered by the Forest Service is essential if in-
7 creasing demands for timber, recreation, and other uses of
8 such lands are to be met; that the existence of such a system
9 would have the effect, among other things, of increasing the
10 value of timber and other resources tributary to such roads;

1 and that such a system is essential to enable the Secretary of
2 Agriculture (hereinafter called the Secretary) to provide
3 for intensive use, protection, development, and management
4 of these lands under principles of multiple use and sustained
5 yield of products and services.

6 SEC. 2. The Secretary is authorized, under such regula-
7 tions as he may prescribe, subject to the provisions of this
8 Act, to grant permanent or temporary easements for speci-
9 fied periods or otherwise for road rights-of-way (1) over
10 national forest lands and other lands administered by the
11 Forest Service, and (2) over any other related lands with
12 respect to which the Department of Agriculture has rights
13 under the terms of the grant to it.

14 SEC. 3. An easement granted under this Act may be
15 terminated by consent of the owner of the easement, by
16 condemnation, or after a five-year period of nonuse the
17 Secretary may, if he finds the owner has abandoned the
18 easement, make a determination to cancel it. Before the
19 Secretary may cancel an easement for nonuse the owner of
20 such easement must be notified of the determination to cancel
21 and be given, upon his request made within sixty days after
22 receipt of the notice, a hearing in accordance with such rules
23 and regulations as may be issued by the Secretary.

24 SEC. 4. The Secretary is authorized to provide for the
25 acquisition, construction, and maintenance of forest develop-

1 ment roads within and near the national forests and other
2 lands administered by the Forest Service in locations and
3 according to specifications which will permit maximum econ-
4 omy in harvesting timber from such lands tributary to such
5 roads and at the same time meet the requirements for pro-
6 tection, development, and management thereof, and for utili-
7 zation of the other resources thereof. Financing of such
8 roads may be accomplished (1) by the Secretary utilizing
9 appropriated funds, (2) by requirements on purchasers of
10 national forest timber and other products, including provi-
11 sions for amortization of road costs in contracts, (3) by co-
12 operative financing with other public agencies and with
13 private agencies or persons, or (4) by a combination of these
14 methods: *Provided*, That where roads of a higher standard
15 than that needed in the harvesting and removal of the timber
16 and other products from lands tributary thereto are to be
17 constructed, the purchasers of national forest timber and other
18 products shall not be required to bear that part of the costs
19 necessary to meet such higher standard and the Secretary
20 is authorized to make such arrangements to this end as may
21 be appropriate.

22 SEC. 5. Copies of all instruments affecting permanent
23 interests in land executed pursuant to this Act shall be re-
24 corded in each county where the lands are located. Copies
25 of all instruments affecting interests in lands reserved from

1 the public domain shall be furnished to the Secretary of the
2 Interior.

3 SEC. 6. The Secretary may require the user or users of
4 a road under the control of the Forest Service, including
5 purchasers of Government timber and other products, to
6 maintain such roads in a satisfactory condition commensu-
7 rate with the particular use requirements of each. Such
8 maintenance to be borne by each user shall be proportion-
9 ate to total use. The Secretary may also require the user
10 or users of such a road to reconstruct the same when such
11 reconstruction is determined to be necessary to accommodate
12 such use. If such maintenance or reconstruction cannot be
13 so provided or if the Secretary determines that maintenance
14 or reconstruction by a user would not be practical, then the
15 Secretary may require that sufficient funds be deposited by
16 the user to provide his portion of such total maintenance or
17 reconstruction. Deposits made to cover the maintenance or
18 reconstruction of roads are hereby made available until
19 expended to cover the cost to the United States of accom-
20 plishing the purposes for which deposited: *Provided*, That
21 deposits received for work on adjacent and overlapping areas
22 may be combined when it is the most practicable and
23 efficient manner of performing the work, and cost thereof
24 may be determined by estimates: *And provided further*,
25 That unexpended balances upon accomplishment of the

1 purpose for which deposited shall be transferred to miscel-
2 laneous receipts or refunded.

3 SEC. 7. Whenever the agreement under which the
4 United States has obtained for the use of, or in connection
5 with, the national forests and other lands administered by
6 the Forest Service a right-of-way or easement for a road or
7 an existing road or the right to use an existing road provides
8 for delayed payments to the Government's grantor, any fees
9 or other collections received by the Secretary for the use of
10 the road may be placed in a fund to be available for making
11 payments to the grantor.

A BILL

To enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

By Mr. RANDOLPH

MARCH 19, 1963

Read twice and referred to the Committee on Public Works

Federal assistance to worthwhile programs and projects which will develop or demonstrate education, recruitment or training practices which can then in turn be profitably employed by other police departments and training organizations.

Mr. President, I want to emphasize that I introduce this bill today in the firm belief that local law enforcement is and must remain a matter of local responsibility and control.

Also, the new bill provides that public and private nonprofit organizations engaged in police education or training, as well as State and local governments, would be eligible to apply for Federal assistance.

Mr. President, I believe the bill introduced today provides a highly desirable and appropriate way for the Federal Government to assist in efforts initiated at State and local levels to raise the professional quality of our police forces. I am very hopeful that this Congress will take favorable action on it.

The VICE PRESIDENT. The bill will be received and appropriately referred.

The bill (S. 1145) to provide Federal assistance to State and local police forces through projects to develop and demonstrate more effective techniques and practices of law enforcement, introduced by Mr. HART, was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

SYSTEM OF ROADS AND TRAILS FOR NATIONAL FORESTS

Mr. RANDOLPH. Mr. President, by request, I introduce and send to the desk a bill to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

The language of the proposed bill is similar to that contained in S. 3231, which was introduced by Senator Chavez, by request, on May 1 1962, and on which no action was taken.

The declared purpose of the bill is to allow for the provision of an adequate system of roads within and near national forests for timber management and harvesting and recreation.

The bill would give the Secretary of Agriculture authority to grant easements for road rights-of-way over land under his control. Permits of a revocable nature can now be issued, but these are not always acceptable where the Department of Agriculture is seeking permanent rights-of-way over privately owned lands. The bill would provide for the termination or cancellation of easements granted by the Department of Agriculture where there is a period of 5 years of nonuse.

Many of the roads of the forest development road system have been and will be required to be built by purchasers of national forest timber. At the present time, purchasers can be required to construct only the standard of road that is needed for each particular sale. The cost of this type road is amortized from stumpage or unit rates. In many in-

stances a higher standard road may be desirable for general usage. The bill would permit the construction of a higher standard road, and provides that the purchaser will not be required to pay that part of the road costs necessary to meet higher standards. This additional cost would be paid for out of appropriated funds.

The bill would also authorize the inclusion in sale contracts of provisions for amortization of road costs through the retention by the purchaser of an appropriate amount of the stumpage or unit rates until the cost had been amortized. If after harvesting is completed, the road had not been completely amortized the purchaser would be compensated from the stumpage or unit rates paid.

The bill also provides for an arrangement whereby the roads may be maintained by requiring the users to deposit sufficient funds to enable the Forest Service to perform the work. At present the Forest Service has authority to require the user to perform maintenance and reconstruction, however, there is no provision in existing law which requires that a deposit be made.

Also Mr. President, I ask unanimous consent that a letter on this subject from the Secretary of Agriculture to the President of the Senate and the text of the bill be printed at this point in the RECORD.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill and letter will be printed in the RECORD.

The bill (S. 1147) to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes, introduced by Mr. RANDOLPH, by request, was received, read twice by its title, referred to the Committee on Public Works, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services.

SEC. 2. The Secretary is authorized, under such regulations as he may prescribe, subject to the provisions of this Act, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way (1) over national forest lands and other lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

SEC. 3. An easement granted under this Act may be terminated by consent of the owner of the easement, by condemnation, or after a five-year period of nonuse the Sec-

retary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within sixty days after receipt of the notice, a hearing in accordance with such rules and regulations as may be issued by the Secretary.

SEC. 4. The Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development and management thereof, and for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of national forest timber and other products, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products from lands tributary thereto are to be constructed, the purchasers of national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard and the Secretary is authorized to make such arrangements to this end as may be appropriate.

SEC. 5. Copies of all instruments affecting permanent interests in land executed pursuant to this Act shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from the public domain shall be furnished to the Secretary of the Interior.

SEC. 6. The Secretary may require the user or users of a road under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a road to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates; *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

SEC. 7. Whenever the agreement under which the United States has obtained for the use of, or in connection with, the national forests and other lands administered by the Forest Service a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed

payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

The letter presented by Mr. RANDOLPH is as follows:

DEPARTMENT OF AGRICULTURE,
Washington, D.C., January 10, 1963.

HON. LYNDON B. JOHNSON,
President of the Senate.

DEAR MR. PRESIDENT: Transmitted herewith for the consideration of the Congress is a draft bill "To enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes."

This Department recommends enactment of the draft bill.

The draft bill is designed to provide to the Secretary of Agriculture certain authorities that are urgently needed and which will be of material aid in constructing and maintaining an adequate system of roads and trails for the national forests and other lands administered by the Forest Service. It specifically would—

1. Set forth findings and declarations of the Congress that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential to provide for intensive use, protection, and management of such lands under principles of multiple use and sustained yield of products and services.

2. Authorize the Secretary of Agriculture to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way over national forest lands and other lands administered by the Forest Service and over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

3. Provide for termination of easements so granted with provision that if cancellation is to be for nonuse the owner must be notified and, if he so requests, be given a hearing in accordance with rules and regulations of the Secretary.

4. Authorize the Secretary to provide for the acquisition, construction, and maintenance of forest development roads, within and near the national forests and other lands administered by the Forest Service, of maximum economy in harvesting timber and at the same time meet the needs for other protection, management, and utilization purposes (a) with appropriated funds, (b) by requirements on purchasers of national forest timber and other products with provisions for amortization of road costs, (c) by cooperation with public and private agencies or persons, or (d) by a combination of these methods. Where roads of a higher standard than that needed in harvesting timber and other products are to be constructed, purchasers of national forest timber and other products would not be required to bear any part of the cost necessary to meet such higher standard and the Secretary would be authorized to make appropriate arrangements to this end.

5. Direct that all instruments affecting permanent interests in land executed pursuant to the bill would be recorded in the county records and copies of all affecting lands reserved from the public domain would be furnished to the Secretary of the Interior.

6. Authorize the Secretary to require users of the roads under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements. The maintenance to be borne by each user

would be proportionate to total use. The Secretary would also be authorized to require users of such roads to reconstruct the same where such reconstruction is needed to accommodate the use. If the required maintenance or reconstruction could not be provided by the user or if the Secretary determined that maintenance or reconstruction by the user would not be practical, the Secretary would be authorized to require the deposit of sufficient funds for such purpose. Deposits made to cover maintenance or reconstruction of roads would go into a fund and would be available until expended to cover the cost of accomplishing the work. Pooling of deposits for work on adjacent and overlapping areas and the use of estimates to determine the cost of performing the work with such deposits would be authorized. Unexpended balances upon accomplishment of the work would be transferred to miscellaneous receipts or refunded as appropriate.

7. Provide that where the agreement under which the United States obtained its rights as to a road provides for delayed payments, any fees or collections for the use of such a road could be placed in a fund to pay the Government's grantor.

There are administered by the Forest Service 154 national forests, 18 national grasslands, and other administrative units, comprising about 186 million acres of land in 44 States and the Commonwealth of Puerto Rico.

An adequate system of forest development roads and trails connecting with forest highways and other highways is essential to proper management and beneficial use of the lands comprising the national forest system and their resources. The presence or absence of transportation facilities has a direct and controlling influence on all phases of forest land management and utilization. This fact determines the volume of timber that can be marketed, the size, duration, and distribution of timber sales within working circles, and the level of salvage cuttings. It is also a major factor in the level of use made of the recreation, wildlife, and forage resources of these lands. We strongly feel it is essential that an adequate system of forest roads and trails be developed and maintained to serve these lands if they are to provide their proper share to the well-being of the Nation.

As of June 30, 1961, there were in the forest development road and trail system about 179,200 miles of roads, and 106,600 miles of trails. It is estimated that the system of forest development roads and trails which will ultimately be needed in order for the national forests to provide on a sustained-yield basis the fullest practicable amount of products and services from their timber, watershed, range, recreation, and wildlife resources will be comprised of about 542,000 miles of forest development roads and about 80,000 miles of trails.

The development program for the national forests which President Kennedy submitted to the Congress on September 21, 1961, proposed for the 10-year period 1963-72 the construction and reconstruction of about 79,400 miles of multipurpose roads and 8,000 miles of trails in addition to supplemental work on roads to be constructed by purchasers of national forest timber and other products.

In order to provide and maintain such an adequate system of forest development roads and trails, it is necessary to have not only the funds to finance them, but also authority to facilitate and make possible effective arrangements for the installation and maintenance of the roads and trails.

In a great many instances, national forest lands are intermingled with lands in one or more non-Federal ownerships. The road or

trail system needed in the particular area is one which will serve both the national forest land and the land in non-Federal ownership. Authority which would enable the Secretary of Agriculture to make satisfactory arrangements for the construction and maintenance of roads in these circumstances is one of the keys to the installation and maintenance of a system of roads and trails to adequately serve the national forests.

A similar letter is being sent to the Speaker of the House.

The Bureau of the Budget advises that the enactment of this proposed legislation would be in accord with the President's program.

Sincerely yours,

ORVILLE L. FREEMAN,
Secretary.

(Enclosure.)

A BILL TO ENABLE THE SECRETARY OF AGRICULTURE TO CONSTRUCT AND MAINTAIN AN ADEQUATE SYSTEM OF ROADS AND TRAILS FOR THE NATIONAL FORESTS, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services.

SEC. 2. The Secretary is authorized, under such regulations as he may prescribe, subject to the provisions of this Act, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way (1) over national forest lands and other lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

SEC. 3. An easement granted under this Act may be terminated by consent of the owner of the easement, by condemnation, or after a five-year period of nonuse the Secretary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within sixty days after receipt of the notice, a hearing in accordance with such rules and regulations as may be issued by the Secretary.

SEC. 4. The Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development and management thereof, and for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of national forest timber and other products, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with pri-

vate agencies or persons, or (4) by a combination of these methods: *Provided*, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products from lands tributary thereto are to be constructed, the purchasers of national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard and the Secretary is authorized to make such arrangements to this end as may be appropriate.

SEC. 5. Copies of all instruments affecting permanent interests in land executed pursuant to this Act shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from the public domain shall be furnished to the Secretary of the Interior.

SEC. 6. The Secretary may require the user or users of a road under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a road to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates; *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

SEC. 7. Whenever the agreement under which the United States has obtained for the use of, or in connection with, the national forests and other lands administered by the Forest Service a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

TV TUBE MANUFACTURERS

Mr. HARTKE. Mr. President, I introduce, for appropriate reference, a bill to eliminate an unintended pyramiding of taxes in connection with the purchase of taxable tubes by a manufacturer of nontaxable tuners for inclusion in television sets which are taxable. This should bring relief to certain manufacturers for a period between November 1, 1950, and December 31, 1954.

Last year the Senate passed such a provision late in the session. It was dropped during a conference with Members of the House owing to a misunderstanding. This misunderstanding has been cleared up, Mr. President, and there is every reason to believe the House would approve such a measure in this session.

The VICE PRESIDENT. The bill will be received and appropriately referred.

The bill (S. 1151) relating to the taxable status of sales prior to September 1, 1955, of tubes for use in the production of certain component parts of television receiving sets, introduced by Mr. HARTKE, was received, read twice by its title, and referred to the Committee on Finance.

PROPOSED AMENDMENT OF CONSTITUTION RELATING TO TERMS OF SENATORS AND REPRESENTATIVES

Mr. METCALF. Mr. President, I introduce, for appropriate reference, a joint resolution proposing a constitutional amendment to extend to 4 years the terms of Members of the House of Representatives, and to 8 years the terms of Senators.

The arguments in favor of this amendment to our Constitution are most persuasive. This is not a partisan proposal; it is a measure designed to strengthen our democratic processes and to make our National Government more sensitive to the wishes of its citizens.

As the distinguished political scientist and student of government, Stephen K. Bailey, has written:

The constitutional provisions for staggered elections are a significant cause of the pullings and haulings in our National Government.

My amendment, Mr. President, would remove one obstacle to efficient and responsible National Government, by eliminating the so-called off-year election of U.S. Senators and Representatives.

Adoption of this constitutional amendment would represent a big step toward reducing much of the needless—and sometimes destructive—partisan bickering that has characterized our National Government when the executive branch is controlled by one political party and the legislative branch by the other.

Under this amendment, when fully operative, candidates seeking election to the House of Representatives and to the Senate—except in special circumstances—would run only in presidential election years.

Mr. President, when the people of this Nation go to the polls, to elect a presidential candidate on the basis of a program he and his party have promised to implement, they should have an opportunity to vote for Senators and Representatives who will support that program.

Past experience indicates that election of a new Congress only in presidential election years would, in all probably, mean control of the executive and legislative branches of our National Government by the same party. If a President had in both Houses of Congress dependable majorities identified with his program, it would be much easier for the electorate to judge the performance of the party in power.

If the in-party failed to meet its commitments, the electorate could unmistakably fix the responsibility, and could vote the President and his congressional

supporters out of office at the next election. But the in-party would have a full 4 years in which to fulfill its campaign pledges before going again to the voters for an expression of confidence.

The arguments in support of lengthening the term of office of Members of the House of Representatives are familiar to all of us. Those of us who have served in the House as Representatives of two-party districts need not be reminded how difficult it is to become familiar with the legislative process and to become competent legislators when the next election is "just around the corner."

In recent years, Mr. President, it has become increasingly difficult to pass needed legislation through the other House. One of the reasons for this, I believe, is the preoccupation of House Members—especially the newer ones from two-party districts—with their reelection. A Representative is sent to Congress to give his constituency a voice in its relations with the Federal Government; but he also is expected to be a legislator—to understand the legislative process and to participate effectively in it. Under the present 2-year term, a new Representative finds it extremely difficult to become an effective legislator before the time when he must face the electorate for a judgment on his performance. A 4-year term would give a Member of the House an opportunity to make a record before seeking a vote of confidence from his constituents.

I believe this amendment deserves the serious consideration of this Congress. I recognize that it would represent a departure from our time-tested election laws; but times are changing, and we must change with them. The international and domestic challenges facing our Nation today and in the years ahead demand a responsible and responsive Congress. Adoption of this amendment would be a step in the direction of making the Congress more sensitive to the needs of our Nation.

Mr. President, I ask unanimous consent to have printed in the RECORD, immediately following my remarks, a section from "The Condition of Our National Political Parties," by Stephen K. Bailey, and the text of the joint resolution proposing the constitutional amendment.

The VICE PRESIDENT. The joint resolution will be received and appropriately referred; and, without objection, the joint resolution and excerpt will be printed in the RECORD.

The joint resolution (S.J. Res. 62) proposing an amendment to the Constitution of the United States providing that the term of office of Members of the House of Representatives shall be 4 years, and the term of office of Senators shall be 8 years, introduced by Mr. METCALF, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of

each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as a part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The House of Representatives shall be composed of Members chosen by the people of the several States and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. The term of office of Representatives shall be four years; except that the term of office of Representatives elected for terms commencing on January 3 of any year following the ratification of this article but preceding the first election to which this section applies, shall be two years.

"SEC. 2. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. Subject to sections 3 and 4 of this article, the term of office of Senators shall be eight years; except that the term of office of Senators elected for terms commencing on January third of any year following the ratification of this article but preceding the first election to which this section applies, shall be six years.

"SEC. 3. Senators elected to the Senate for terms commencing on January 3 of the year commencing after the expiration of two years after the first election to which sections 1 and 2 of this article apply shall be divided into two classes. There shall be assigned to the first class any such Senator who is from a State which is then represented in the Senate by a Member whose term expires on January 3 of the year commencing after the expiration of eight years after the first election to which sections 1 and 2 of this article apply. There shall be assigned to the second class any such Senator who is from a State which is then represented in the Senate by a Member whose term expires prior to the said January 3 date. The term of office of Senators assigned to the first class shall be two years. The term of office of Senators assigned to the second class shall be six years.

"SEC. 4. The offices of Senators from any State admitted to the Union after the ratification of this article shall be divided by lot into two classes immediately after the Senate shall be assembled in consequence of the first election of Senators from such State. The term of office of the Senator assigned to the first class shall terminate on January 3 of the year following the first election, occurring after the election of such Senator, at which electors for the offices of President and Vice President are elected. The term of office of the Senator assigned to the second class shall terminate on January 3 of the year following a second election, occurring after the election of such Senator, at which electors for the offices of President and Vice President are elected.

"SEC. 5. Sections 1 and 2 of this article shall first apply in the case of Representatives and Senators who are elected for terms commencing on January third of the year following the first election, occurring more than six months after the ratification of this article, at which electors for the offices of President and Vice President are elected.

"SEC. 6. The first sentence of section 2 of article I, the first three sentences of section 3 of article I, and the first two sentences of article XVII are hereby repealed.

"SEC. 7. This article shall not be so construed as to affect the election or term of any

Senator or Representative elected before it becomes valid as part of the Constitution.

"SEC. 8. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

The excerpt presented by Mr. METCALF is, as follows:

EXCERPT FROM ARTICLE "CONGRESSIONAL TERMS," BY STEPHEN K. BAILEY

The constitutional provisions for staggered elections are a significant cause of the pullings and haulings in our National Government. It is equally clear that a 2-year term for the House is too short to turn a freshman Member into an effective legislator or to avoid the harassing and expensive responsibilities of perpetual campaigning. The last election and the next election are often an indistinguishable blur. Furthermore, if a truly competitive two-party system should develop across the Nation, there will be more frequent alternation of victorious candidates between the parties, thus shortening the tenure of any one Congressman.

A 4-year term for the House, if it coincides with the presidential term, should have a number of important effects. Under normal conditions, it would insure the same political complexion for the House as the President's. It would reduce the continuous campaign and constituency pressures which a 2-year term almost inevitably fosters. It would give Congressmen sufficient time to learn their trade and to make a substantial contribution to public life.

Also, if an 8-year term were provided for Members of the Senate (half of them coming up for election every 4 years at the same time as the Presidency), the likelihood that the President would have a working majority in both Houses would be overwhelming. At the same time, the conservative utility of overlapping terms would be maintained with only a slight modification in the constitutional wish for continuity.

Enhancing the possibility of one-party control of the Government would enhance the possibility of substantial governmental power and would unmistakably fix responsibility for governmental policy.

ADDITIONAL COSPONSORS OF BILLS

Under authority of the orders of the Senate, as indicated below, the following names have been added as additional cosponsors for the following bills:

Authority of February 28, 1963:

S. 942. A bill to amend section 7 of the Clayton Act to give effect to the operation of the provisions of that section applicable to certain railroad consolidations and mergers until December 31, 1964, and for other purposes: Mr. GRUENING.

Authority of March 15, 1963:

S. 1111. A bill to provide for the optimum development of the Nation's natural resources through the coordinated planning of water and related land resources, through the establishment of a water resources council and river basin commissions, and by providing financial assistance to the States in order to increase State participation in such planning: Mr. EASTLAND, Mr. HART, and Mr. MOSS.

ADDITIONAL COSPONSOR OF RESOLUTION

Mr. PROUTY. Mr. President, I ask unanimous consent that the junior Senator from California [Mr. ENGLE] may

be added as a cosponsor of Senate Resolution 30, a measure to broaden the legislative authority of the Select Committee on Small Business.

I also ask unanimous consent that on the next printing of the resolution the name of the junior Senator from California [Mr. ENGLE] may be added to the list of those Senators who are cosponsoring the measure.

The VICE PRESIDENT. Without objection, it is so ordered.

NOTICE OF HEARING ON PACIFIC NORTHWEST POWER GENERATION—S. 1007

Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate that the Committee on Interior and Insular Affairs has scheduled a public hearing for April 2 and 3 on S. 1007, a bill relating to Pacific Northwest power generation.

The hearing will begin at 10 a.m. on April 2 and will be held in our committee hearing room in the New Senate Office Building.

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE APPENDIX

On request, and by unanimous consent, addressed, editorials, articles, etc., were ordered to be printed in the Appendix, as follows:

By Mr. RANDOLPH:

Editorial, "Skidding on Oil," from March 16, 1963 issue of the Washington Post, and his answer in letter to the editor, together with quotes from and comments on news articles reporting Interior Department's March 15 residual oil import control order.

Speech by Deputy Federal Highway Administrator, Hon. D. Grant Mickle, before the Regional Highway Research and Development Conference, held March 12, 1963, in Columbus, Ohio.

Excerpts from proceedings at 14th annual State of the Nation Dinner of the Specialized Business Press of America, held February 7, 1963, at the Sheraton-Park Hotel, Washington, D.C.

By Mr. HAYDEN:

Statement regarding the closure of the Glen Canyon Dam.

By Mr. PASTORE:

Statement by Dr. Emmett J. Murphy on behalf of the National Chiropractic Association, with respect to having the week of May 1-7 set aside at National Correct Posture Week.

By Mr. JAVITS:

Statement of Dr. Julius Mark, senior rabbi, Temple Emanu-El, New York City, and president, Synagogue Council of America, at National Conference of Religion and Race, January 14, 1963.

Article entitled "Niagara Falls, Servant of Good Neighbors," written by Walter Meayers Edwards, and published in the National Geographic magazine for April 1963.

By Mr. SCOTT:

Editorial entitled "GOP Budget Snippers," published in the Pittsburgh (Pa.) Press, of March 8, 1963.

Editorial entitled "Get All of Them Out," published in the Washington (D.C.) Star, of March 11, 1963.

Editorial entitled "The Cave Men of Cuba," published in the Philadelphia (Pa.) Evening Bulletin, of March 8, 1963.

Article entitled "Centennial Birthday of Rev. Andrew Pavco," written by John C. Sci-

June 18, 1964

16. WILDLIFE. The Commerce Committee reported with amendment S. 1363, to increase the participation by counties in revenues from the National Wildlife Refuge System by amending the act of June 15, 1935, relating to such participation (S. Rept. 1096). p. 13754
17. PESTICIDES. Sen. Ribicoff set forth issues regarding pesticides, reviewed actions which have already been taken, and announced that the Subcommittee on Reorganization and International Organizations of the Senate Government Operations Committee will resume hearings on this subject beginning, June 29, and will consider charges that the Public Health Service mismanaged its investigation of the recent Mississippi River fish kill. p. 13754
18. FOOD-FOR-PEACE. Sen. Humphrey inserted a speech by George Goss defending the food-for-peace program. pp. 13769-70
19. FOREIGN AID. Sen. Humphrey inserted a speech by Assistant Secretary of State Mann, "The Democratic Ideal in Our Policy Toward Latin America." pp. 13770-5
20. POVERTY. Sen. Yarborough inserted the testimony of Secretary of Labor Wirtz on the poverty bill, S. 2642. pp. 13787-9
21. WHEAT. Sen. McGovern inserted a letter from Assistant Secretary Jacobson reporting on the status of wheat sales to Russia. p. 13826
22. FOREST ROADS. The Public Roads Subcommittee approved for consideration by the Public Works Committee S. 1147, enabling construction of an adequate system of roads for the national forests. p. D482

ITEMS IN APPENDIX

23. POVERTY. Sen. Morton inserted an editorial critical of the proposed poverty program and commending Rep. Snyder's opposition to certain features of the proposal. pp. A3328-9
24. AREA REDEVELOPMENT. Extension of remarks of Rep. Talcott criticizing and urging a congressional investigation of the area redevelopment program. p. A3335
Rep. Widnall inserted a letter from Sar A. Levitan suggesting certain changes in the area redevelopment program. p. A3367
25. FOREIGN TRADE. Extension of remarks of Puerto Rican Resident Commissioner Fernos-Isern commemorating the 30th anniversary of the enactment of the Foreign-Trade Zones Act. pp. A3326-7
26. OPINION POLLS. Rep. Martin, Nebr., inserted the results of an opinion poll in his district on various matters, including the wheat program, sales of agricultural products to Communist nations, meat imports, civil rights, and the proposed poverty program. p. A3329
Rep. Rhodes, Ariz., inserted the results of an opinion poll in his district on various matters, including trade with Communist nations, civil rights, establishment of a Job Corps, and establishment of a Domestic Peace Corps. pp. A3347-8

BILLS INTRODUCED

27. PUBLIC LAW 480. S. 2925, by Sen. McGovern, to amend title II of Public

Law 480 to authorize the use of foreign countries by the President to more effectively carry out programs under titles II and III; to Agriculture and Forestry Committee. Remarks of author. pp. 13842-3

28. ORGANIZATION. H. R. 11664, by Rep. Cohelan, to establish a Commission on the Organization of the Congress; to Rules Committee.
29. WATER RESOURCES. H. R. 11667, by Rep. Smith of Californis, to authorize the coordinated development of the water resources of the Pacific Southwest, and for other purposes; to Interior and Insular Affairs Committee.
30. TOBACCO. H. R. 11671, by Rep. Rogers, to regulate the labeling and advertising of cigarettes, and for other purposes; to Interstate and Foreign Commerce Committee.
31. TIME STANDARDS. H. R. 11672, by Rep. Corman, to provide a uniform period for daylight saving time; to Interstate and Foreign Commerce Committee.

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COMMITTEE HEARINGS JUNE 19:

Food Stamp plan, S. Agriculture (farm organizations to testify).

Paperwork management pursuant to Federal Reports Act, Census and Government Statistics Subcommittee, H. Post Office and Civil Service (Koffsky and Trelogan to testify).

Pay bill, S. Civil Service (exec).

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Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

Washington, D. C. 20250

Official business Postage and fees paid
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(For information only;
should not be quoted
or cited)

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For actions of July 8, 1964

88th-2nd, No. 135

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HIGHLIGHTS: Senate committees reported poverty and forest-roads bills. Sen. Pearson questioned ideas for revision of marketing system. Sens. Stennis and Anderson spoke in favor of Mansfield amendment on meat imports. Sens. Humphrey and McNamara recommended increase in sugar-beet quota.

SENATE

1. POVERTY. The Labor and Public Welfare Committee reported with amendment S. 2642, the poverty bill. The printing of the report was delayed until July 22. p. 15508
Sen. Allott inserted a letter from a constituent criticizing the poverty bill and opposing meat imports. p. 15592
2. FOREST ROADS. The Public Works Committee reported with amendment S. 1147, to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests (S. Rept. 1174). p. 15506
3. FOREIGN AID. The Foreign Relations Committee was authorized to report H. R. 1136 the foreign-aid authorization bill, during Senate recess. p. 15505
4. ELECTRIFICATION. S. 2853, to provide for research into the development of practical means for the utilization of solar energy, was transferred from the Aeronautical and Space Sciences Committee to the Interior and Insular Affairs Committee. p. 15514

5. MARKETING. Sen. Pearson expressed concern about a recommendation to this Department by the National Advisory Commission on Cooperatives for "the forming of producer cooperatives into independent bargaining and operating associations and also to use pool cooperatives which have been used in other countries." pp. 15517-8
Sen. Humphrey gave a tribute to Murray D. Lincoln, president of the Co-operative League. pp. 15548-9
6. MEAT IMPORTS. Sens. Stennis and Anderson spoke in favor of the Mansfield amendment to H. R. 1839 providing for restrictions on meat imports. pp. 15545, 15556-60
7. WILDLIFE; PARKS. Sen. Yarborough stated that wildlife threatened by extinction would be helped by more national parks. pp. 15552-4
8. AUTOMATION. Sen. Nelson inserted an article expressing concern about automation. pp. 15572-6
9. SUGAR. Sens. Humphrey and McNamara spoke in favor of an additional sugar-beet quota. pp. 15568-91
10. LEGISLATIVE PROGRAM. H. R. 7381, to revise the dual-compensation laws, was made the unfinished business for consideration today, July 9 (p. 15591). Sen. Humphrey said a perfunctory session will be held Friday with no business being transacted (p. 15569). It was agreed that the International Coffee Agreement will be postponed until July 20 (p. 15569).

ITEMS IN APPENDIX

11. ELECTRIFICATION. Extension of remarks of Sen. Neuberger inserting a statement by Sen. Engle before the Senate Appropriations Committee criticizing the proposed west coast electric power interties. pp. A3717-8
12. IMPORTS. Extension of remarks of Rep. Beermann inserting an article discussing the problems of the broom industry with imports. p. A3720

BILLS INTRODUCED

13. PERSONNEL; FOREIGN OFFICERS. S. 2983, by Sen. Fulbright, to amend the Foreign Service Act and the Federal Employees International Service Act; to Foreign Relations Committee. Remarks of author, pp. 15509-10
14. RECLAMATION. S. 2985, by Sen. Bible, to amend the act of August 1, 1956 (70 Stat. 775), so as to provide that the excess land provisions of the Federal reclamation laws shall not apply to certain lands that will receive a supplemental water supply from the Washoe reclamation project; to Interior and Insular Affairs Committee. Remarks of author, pp. 15510-1

BILLS APPROVED BY THE PRESIDENT

15. APPROPRIATIONS. H. R. 10433, making appropriations for the Department of Interior and related agencies for 1965. See Digest 129 for a summary of Forest Service items. Approved July 7, 1964 (Public Law 88-356).
16. TARIFF. H. R. 9311, to continue for two years the suspension of duty on certain alumina and to make permanent the suspension of duty on certain bauxite. Approved July 7, 1964 (Public Law 88-362).

ENABLING THE SECRETARY OF AGRICULTURE TO CONSTRUCT
AND MAINTAIN AN ADEQUATE SYSTEM OF ROADS AND TRAILS
FOR THE NATIONAL FORESTS, AND FOR OTHER PURPOSES

JULY 8, 1964.—Ordered to be printed

Mr. RANDOLPH, from the Committee on Public Works, submitted the following

R E P O R T

[To accompany S. 1147]

The Committee on Public Works, to whom was referred the bill (S. 1147) to give the Secretary of Agriculture authority for granting easements across national forest and other lands administered by the Forest Service and to provide for means of financing construction and maintenance of roads and trails on such lands, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Section 4, page 3, line 14, following the word "Provided," would delete lines 14 through 21 and substitute the following:

That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate.

PURPOSE OF THE BILL

S. 1147 is addressed to a number of matters related to roads and trails within and adjacent to the national forests and other lands administered by the Forest Service. The bill provides specific authority to the Secretary of Agriculture to grant easements for road rights-of-way over such lands and means by which such easements may be terminated. The bill provides for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service

and authorizes four specific methods of financing such roads and their maintenance and reconstruction commensurate with their use. The bill also makes provision for recording, in the county where the affected land is situated, all instruments affecting premanent interests in land executed under the authority conferred by the bill. Finally, the bill provides for establishment of a fund into which any fees collected from users of a road may be placed for subsequent payment whenever the terms of a grant to the United States of a right-of-way or easement call for delayed payment to the grantor.

NEED FOR THE BILL

Landownership within the national forests

The national forests and national grasslands encompass approximately 186 million acres of land in 44 States and in the Commonwealth of Puerto Rico, of which about 181.5 million acres are in national forests. The major portion of national forests, 160 million acres, are lands which were withdrawn from the public domain, while the remainder are lands acquired under the act of March 1, 1911 (36 Stat. 961, 16 U.S.C. 513-519 (the Weeks law)) or acquired by exchange or other means.

With the exterior boundaries of the national forests there are some 38 million acres of land in private ownership. In many of the Western States, it is common to find square mile sections of land in alternating private and Federal ownership in a typical checkerboard pattern, a pattern resulting from the railroad land grants made in the latter part of the 19th century.

The sections remaining in the public domain frequently became a part of the national forests as the national forests were subsequently established by withdrawal of lands from the public domain, while the railroad lands passed into diverse private ownership.

While the checkerboard pattern of mixed ownership is typical only of some of the Western States, private inholdings within the external boundaries of the national forests exist also in the forest lands acquired under the Weeks law. In the State of West Virginia, for example, 835,606 acres are in private ownership within the exterior boundaries of the national forests while 806,375 acres are administered by the U.S. Forest Service. In the State of North Carolina there are 1,741,679 acres of private land inside the national forest boundaries where 1,079,144 acres of public land are administered by the Forest Service. And in the State of Kentucky, 899,524 acres of private land exist within the boundaries of the national forests, which otherwise comprise only 457,561 acres of federally owned land.

As of June 30, 1963, the entire area of 186 million acres administered by the Forest Service was served by 186,241 miles of roads and 104,522 miles of trails in the forest development system. It is estimated that when completely installed, this system will consist of 542,250 miles of access roads and that the trail network will have been reduced to 80,000 miles.

Rights of ingress and egress

Although the Secretary of Agriculture was given statutory authority (act of February 1, 1905, 33 Stat. 628, 16 U.S.C. 551) to administer the national forests at the time Congress transferred jurisdiction from

the Department of Interior to the Department of Agriculture, the act has not been construed as including the power to grant easements across national forest lands. Moreover, by letter between the Secretaries of Agriculture and Interior dated June 8, 1905 (33 L.D. 609-610), the two Secretaries agreed that the Secretary of Agriculture would not make grants which would amount to easements burdening the lands held in the ownership of the United States. Thus, from the very inception of administration of the national forests by the Secretary of Agriculture, he has lacked explicit authority to grant easements across national forest lands; nor has the Secretary assumed that such authority was implicit in his responsibility for administering national forests.

Owners of land within the exterior boundaries of the national forests, however, were until recently regarded as having statutory assurance of ingress and egress to and from their lands by reason of the provisions of the act of June 4, 1897 (30 Stat. 36, 16 U.S.C. 478). These rights were evidenced upon application therefor by instruments issued by the Forest Service entitled "Stipulations Governing the Exercise of the Right of Ingress and Egress." More commonly, however, rights to cross national forest lands were made in the form of special use permits. Such permits allowed the applicant to cross national forest lands upon compliance with specified terms and conditions and with the applicable administrative regulations of the Department of Agriculture, and were made expressly revocable at any time. The Secretary of Agriculture did not condition in any way the rights of persons owning lands within the exterior boundaries of the national forests to cross national forest lands to reach their property in view of what was regarded as a statutory right of ingress and egress.

Present national forest rights-of-way policy

On February 1, 1962 the Attorney General of the United States, in response to questions directed to him by letter from the Secretary of Agriculture dated August 2, 1961, held that the act of June 4, 1897 (32 Stat. 36, 16 U.S.C. 478) was no barrier to the Secretary's conditioning—

the grant of a right to use existing or to construct new roads on national forest lands on the grant by the applicant of a reciprocal right to the United States.

The Attorney General also held, however, that the act would prohibit so conditioning the right of ingress and egress of actual settlers residing within the boundaries of national forests over already existing roads.

Following the Attorney General's opinion, the Forest Service drafted and circulated for review regulations governing the granting of access across the national forests. The proposed regulations met with considerable objection on a variety of issues from owners holding lands within or adjacent to national forests. These regulations subsequently were revised and promulgated by the Secretary of Agriculture on June 10, 1963.

Forest Service experience both before and after February 1, 1962, in acquiring and negotiating for needed rights-of-way furnishes ample evidence that most right-of-way negotiations, particularly when the Forest Service seeks rights to use existing access roads which are on

private lands and which have been built at private expense, raises complex problems. Some of these are:

1. Difficulties in agreeing on valuation of the interest which the Forest Service seeks to acquire; these difficulties turn principally on: (a) determinations of timber volumes to be moved over the particular road systems, (b) estimating replacement costs of the roads involved, and (c) the extent of the interest being acquired by the Forest Service for the United States.
2. Extent of rights to reimbursement for road segments already built or to be built by one party on land of the other.
3. Questions of whether any share of construction and maintenance costs for the roads should be borne by users other than timber haulers.
4. The extent of control of other uses and individual users which will be vested in either party alone, and the extent of Forest Service control over the grantor and his uses.
5. Availability of appropriated funds for use in condemnation proceedings if and when negotiations fail.

But the most significant barrier to the entering of voluntary exchanges of rights-of-way between private landowners and the Forest Service since February 1, 1962, has been the inability of the Forest Service, through the Secretary of Agriculture, to grant permanent easements. In view of the holding by the Attorney General that the act of June 4, 1897 (30 Stat. 36, 16 U.S.C. 478), was not to be construed as a statutory guarantee of access to private lands within the national forests, private landowners assert it is imperative because of their long-range forest management needs and large capital investments in roads that they receive permanent access rights from the Forest Service, particularly when they are asked to give such rights to the United States to serve virtually identical long-range management needs.

The Forest Service has attempted since February 1962, to utilize provisions of the act of March 3, 1899 (30 Stat. 1233, 16 U.S.C. 525), as the basis for furnishing permanent rights, which are referred to as being "in the nature of easements."¹ That act, however, says nothing about the nature of any right to be conferred under its authority. Enough doubt has been expressed about the nature of the right conferred² so that a considerable number of landowners have either refused to accept instruments issued under authority of this statute or have reluctantly accepted them in exchange for permanent easements which they have granted to the United States. Furthermore, the statute is construed to apply only to those portions of the national forests which were withdrawn from the public domain and were originally under the jurisdiction of the Secretary of the Interior. Millions of acres of national forest lands were purchased or were acquired otherwise than by withdrawal, particularly in the Appalachian region, and thus do not fall within the purview of the statute. Lastly, it is not satisfactory from an administrative standpoint for the Secretary of Agriculture, who is vested with authority and responsibility for administering the national forests, to have to apply to the

¹ The act says:

"In the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any national forest when in his judgment the public interests will not be injuriously affected thereby."

² See, e.g., "Report of the Committee on Timber and Vegetative Resources," 1963 Committee Reports of the American Bar Association, Section of Mineral and Natural Resources Law, pp. 137-144.

Secretary of Interior in a large number of the cases where the Secretary of Agriculture desires to grant a right-of-way across national forest lands.

The foregoing discussion summarizes the access conditions prevailing in the national forests at the time S. 1147 was referred to the committee.

HEARINGS

Hearings on S. 1147 were conducted by the committee on June 11, 1963, and July 31, 1963. Testimony was received on the first day from representatives of the U.S. Forest Service, who testified for the Department of Agriculture in support of the bill, and from spokesmen for the forest products industry. Representatives of the timber industry testified favorably toward the measure, but suggested several amendments which treated separate but closely related access problems on the national forests.

Between the two hearings of June 11 and July 31, 1963, committee members held frequent consultations with representatives of the U.S. Forest Service, the timber industry, and interested conservation groups. At the hearing of July 31, 1963, the committee received testimony again from officials of the U.S. Forest Service who opposed the timber-industry proposals, and from representatives of conservation groups who testified in favor of the bill but in opposition to the amendments proposed by the forest-products industry.

In subsequent discussions between the committee and representatives of the Forest Service, the timber industry, conservation groups, and the senior Senator from Oregon (Mr. Morse), who submitted substitute proposals as well as other valuable suggestions, the timber industry suggestions were refined and restricted to the three provisions set out in the margin, which were offered as amendments to section 2 of the bill.³

The first proposal was advanced in view of the possibility—as indicated in testimony by the Forest Service—that the Secretary of Agriculture, through the Forest Service, might in some instances condition issuance of an easement upon receipt of an easement disproportionately higher in value.

The second proposal was addressed to the problem of assuring that a private timber owner's harvesting and replanting schedules not be disrupted during the often lengthy period of negotiation culminating in exchange of rights-of-way. Testimony before the committee indicated that inordinate delays in negotiations work a hardship on the private timber grower who must be primarily concerned with keeping his mill in operation and his employees at work.

The third proposal is in response to certain policies and practices of the Forest Service emanating from Opinion of General Counsel No. 88, U.S. Department of Agriculture, and from the Opinions of the

³ (a) "Such grant may be conditioned upon receipt of consideration which shall be substantially equal to the fair market value of the easement granted.

(b) "While an application for an easement is pending, the Secretary shall, upon request by the applicant, issue a temporary permit to cross lands subject to the Secretary's jurisdiction under such conditions as will protect the property of the United States. The Secretary need not issue a temporary permit if prior to or within ninety days after receipt of the application he has determined in accordance with established law that no roads shall be built in the area for which the application is made. Such permit shall be limited to a period not to exceed three years, unless otherwise extended by the Secretary.

(c) "Any person who, pursuant to permission granted by appropriate authority, constructed at his own expense a road or road structure on lands subject to the Secretary's jurisdiction for access to his own lands shall have a compensable interest in such road or road structure such that when it is determined in the public interest to permit substantial use thereof by the United States, or others, such person, his successor or assign shall be paid equitable consideration therefor, under such arrangements as may be prescribed by the appropriate Government officer."

Comptroller General of December 19, 1960, July 3, 1961, and March 2, 1962. The combined effect of these opinions is that when roads are built at private expense on national forest lands without a precedent agreement calling for contributions toward the cost of construction from the Forest Service, subsequent use of the roads for removing national forest timber does not entitle the builder to recompense for any share of his cost. Yet the Forest Service, in constructing a road at Government expense on private land, insists that it shall have the right to charge a proportionate share of the cost for any subsequent use of the road made by the private landowner. The industry proposal would apply the same principle to roads built at private expense on Government lands as to roads built at Government expense on private lands.

The Forest Service resisted adoption of these three proposals. However, the committee was assured during the hearings by representatives of the Forest Service and by communication from the Department of Agriculture that the present practices of the Forest Service under its right-of-way regulations already implement the objectives of the timber industry's first two proposals and that these were consistent with Forest Service policy.

The result sought by the third proposal is apparently being achieved under certain types of cost-sharing agreements presently being entered into by the Forest Service with private landowners before construction of contemplated roads is undertaken by either party. It is anticipated, furthermore, that with the easement-granting authority being made available to the Secretary by this legislation, that such cost-sharing agreements will increase in number.

EXPLANATION OF THE AMENDMENT

The substitute amendment adopted by the committee is addressed to the proviso of section 4 and was proposed as a clarifying amendment by the Department of Agriculture. In a letter to the committee dated July 30, 1963, Acting Secretary of Agriculture Charles Murphy stated:

The intent and purpose of the proviso in section 4 are to assure that national forest timber will not pay any part of the road costs beyond that necessary to harvest the national forest timber. We believe this can be worded to make it clear that requirements of timber purchasers to construct maximum economy roads could not have the effect of reducing the 25 percent of national forest receipts paid annually to the States to be expended for roads and schools for the benefit of counties in which national forests are located. We, therefore, recommend that the proviso be amended to read as follows:

"Provided, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate."

Thus, the result of section 4, with the substitute amendment, is to revise somewhat the present authority of the Forest Service so as to permit, in connection with timber sales, the design of not just "prudent operator roads" but "maximum economy roads." However, to the extent that road design exceeds the needs of economical harvesting of the particular timber sale (the standard for the so-called prudent operator road) the additional costs are not chargeable to the sale involved, but must come from one or more of the sources of financing enumerated in the second sentence of section 4.

The substitute amendment thus preserves the "prudent operator" concept of roads so far as the timber purchaser is concerned, while allowing the Forest Service to construct "maximum economy" roads in accordance with the policy of the Congress as expressed in the Forestry Multiple-Use Act of 1960, act of June 12, 1960 (74 Stat. 215, 16 U.S.C. 528). With regard to the counties in which the national forests are located, the substitute amendment helps to preserve the maximum return from the 25 percent of the net receipts of the national forest which the counties receive under the act of May 23, 1908, as amended (35 Stat. 260, 16 U.S.C. 500). In the case of timber, the 25 percent is computed on the basis of residual value of the stumpage, after deducting estimated costs and an allowance for profit and risk from estimated selling values of end products. Inasmuch as the cost of roads incident to a particular timber sale reduces the net proceeds attributable to stumpage, the counties in which the national forests lie have a vital concern in limiting road costs.

COMMITTEE VIEWS

After careful consideration of the proposals of the timber industry and the substitute proposals of the senior Senator from Oregon (Mr. Morse) the committee decided at this time to report the bill without the suggested amendments to section 2. However, the committee will maintain an active and continuing interest in the subject matter of this legislation and in the related problems revealed during the hearings. It is hoped that a diligent and careful administration of the Forest Service regulations promulgated on June 13, 1963, will resolve many of the problems raised by representatives of the forest products industry. Toward the fulfillment of this hope, the committee admonishes the Forest Service to maintain a scrupulous regard for the spirit and intent of the letter of June 10, 1963, from Secretary of Agriculture Orville L. Freeman to Chief Edward P. Cliff, in which Secretary Freeman directs the Forest Service:

* * * to recognize the rights and privileges of the owners of the intermingled and related lands in private and other ownerships * * * [and] consistent with laws and regulations * * * to assist and cooperate with the private owners in development and use of access for their lands and property.

It is vital to a sound democracy that the Government maintain just and equitable relations with its citizens in all spheres of activity. The committee therefore acknowledges the principle of compensable interest in roads constructed at private expense on Government land when such roads are used for commercial purposes by the Government or other persons than the builder. The problem of assuring such

compensable interest has not been solved by this legislation, and will therefore be kept under the continuing consideration of the committee.

The committee also endorses, and urges the Forest Service to explore the means of implementing, the suggestion advanced by the senior Senator from Oregon (Mr. Morse) that—

The timber purchasers should continue to build sale roads under timber contracts. Permanent main-type roads should be built by road contracts let at bid, the funds to be obtained by combining a portion of the stumpage value with appropriated funds. A procedure similar to that used by the Bureau of Public Roads should be adopted which permits adjusting allowances due to defects in road construction estimates or timber volume estimates where timber purchasers are required to build roads as part of a timber contract.⁴

Probably the most important public benefit to be anticipated from this legislation is the expectation that by furnishing to the Secretary of Agriculture the means for making reciprocal grants to private landowners, the Congress will thereby encourage voluntary exchanges of rights-of-way on a mutually satisfactory basis. Once fair and equitable access across both public and private lands can be achieved, use and management objectives for the benefited lands can be pursued without distraction caused by uncertainties of ingress and egress.

It should be expressly noted that this legislation is intended neither to affirm nor to abrogate the Attorney General's interpretation of the act of June 4, 1897 (32 Stat. 36, 16 U.S.C. 478), with respect to the act's assurances or lack of assurances concerning access to private lands across national forest lands. However, the predictable effect of this legislation will be to minimize the likelihood of litigation between the United States and private landowners designed to test applications of the Attorney General's interpretation of the act of June 4, 1897. This legislation will provide to most owners of private land a satisfactory alternative to statutory assurance of access to and from their lands. The committee therefore recommends enactment of the bill as amended.

SECTION-BY-SECTION ANALYSIS

Section 1 contains a declaration of policy underlying the development and administration of an adequate system of multiple-use roads and trails within and near the national forests and other lands administered by the Forest Service.

Section 2 authorizes the Secretary of Agriculture to grant permanent or temporary easements across the national forests or other lands administered by the Forest Service, and lands over which the Department of Agriculture has such rights under the terms of a grant to it.

This authority permits the Secretary to grant easements for entry upon the national forests for all lawful and proper purposes. Persons or other public agencies who exchange reciprocal rights with the Forest Service as well as those who are unable to do so are eligible for easements when the Secretary determines that such grants would not be inimical to the public interest. The section provides author-

⁴ Committee hearings, p. 165.

ity to make grants for a purpose and duration reasonably needed by the applicant.

Section 3 provides for cancellation of easements for nonuse, and provides for a hearing prior to such cancellation. Moreover, the section provides that if the Secretary decides to terminate an easement for other than nonuse, he may do so only by condemning such easement or with the consent of the easement holder.

This section follows the general rules of law applicable to cancellation of easements.

Section 4 of the bill permits the Secretary to provide for construction of access roads to a standard which will serve the long-term needs of all national forest users. These roads are called "maximum economy" roads. The section provides for financing the construction of such roads through use of (1) appropriated funds, (2) requirements on purchasers of national forest timber and other products, (3) cooperative financing with other public agencies and private parties, and (4) a combination of these methods. There is an amended proviso in the section that if a road is to be built to a standard higher than needed for removal of timber or other products from a particular sale, that neither the timber nor other products shall bear any of the costs attributable to the higher standard.

Under its existing statutory authority to sell timber, the Forest Service may not require a purchaser of Federal timber as an incident of his timber-purchase contract to build a road to a standard higher than necessary for harvesting the timber involved in the particular sale. Nor may the cost of such higher standard road be charged against the timber sold. Roads built to standards necessary for access to the sale area are called "prudent operator" roads; i.e., those roads which a prudent operator would deem necessary to harvest such timber. In short, present authority does not permit the Forest Service to exchange timber for roads except to the extent the roads are a necessary incident to the sale of the particular timber.

Particularly since the passage of the Forestry Multiple-Use Act of 1960, act of June 12, 1960 (74 Stat. 215, 16 U.S.C. 528), the Forest Service quite properly in many cases desires to have roads constructed to a standard higher than that necessary to harvest timber, or to harvest timber from a particular sale. Many other users travel over these roads, and roads built to a standard only to accommodate timber or a single initial timber sale may prove inadequate to carry the traffic of all users, or even of subsequent timber sales. Later reconstruction of roads initially constructed to meet needs for a single timber sale is often inefficient and unduly costly. The Forest Service sought authority by section 4 of the bill as initially introduced to charge against timber in a particular sale the full cost of a road built to standards which would satisfy anticipated use for all subsequent timber sales, and not just the initial sale. The substitute amendment later proposed by the Department of Agriculture, and adopted by the committee, repairs this deficiency.

Section 5 provides that permanent easements will be placed of record in the counties in which the lands are located and that copies of instruments affecting public domain lands must be furnished to the Secretary of Interior.

This section provides for orderly land recordkeeping.

Section 6 requires users of roads under control of the Forest Service to pay their fair share of the maintenance and reconstruction costs of such roads. The section provides authority to assess and collect maintenance charges in proportion to total use. It also provides that the Secretary may in his discretion likewise apportion reconstruction charges.

The Secretary already has authority to require commercial haulers to bear an equitable share of the maintenance and reconstruction work of roads under the control of the Forest Service. Forest Service officials testified, however, that the Secretary may not require such users to deposit money with the Forest Service in lieu of performing such work. Often, there are several users operating on a particular road at the same time, some of whom may not be able to perform maintenance and reconstruction work. Moreover, since each user is required to maintain a particular road in proportion to his own use, it is often impractical to have several users simultaneously performing maintenance in proportion to the use by each. This section authorizes the Secretary to collect from each user his pro rata charge of maintenance and reconstruction costs, and permits the Secretary to make independent arrangements to have such work performed.

Section 7 provides for accruing funds with which to make payments to grantors of access rights who have agreed to accept delayed payments.

Often, the Forest Service is granted the right to use a road which is conditioned upon payment of a rental or a share of the construction costs to the grantor. Such payments may not be immediately due. Section 7 permits the Secretary to accept such payment from authorized users and to hold such money in a fund for later payment to grantors.

The purpose of this section is to provide administrative flexibility necessary properly to receive, retain and disburse such funds.

AGENCY COMMENTS

DEPARTMENT OF AGRICULTURE,
Washington, D.C., January 10, 1963.

Hon. LYNDON B. JOHNSON,
President of the Senate.

DEAR MR. PRESIDENT: Transmitted herewith for the consideration of the Congress is a draft bill to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

This Department recommends enactment of the draft bill.

The draft bill is designed to provide to the Secretary of Agriculture certain authorities that are urgently needed and which will be of material aid in constructing and maintaining an adequate system of roads and trails for the national forests and other lands administered by the Forest Service. It specifically would—

1. Set forth findings and declarations of the Congress that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential to provide for intensive use, protection, and management of such lands under

principles of multiple use and sustained yield of products and services.

2. Authorize the Secretary of Agriculture to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way over national forest lands and other lands administered by the Forest Service and over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

3. Provide for termination of easements so granted with provision that if cancellation is to be for nonuse the owner must be notified and, if he so requests, be given a hearing in accordance with rules and regulations of the Secretary.

4. Authorize the Secretary to provide for the acquisition, construction, and maintenance of forest development roads, within and near the national forests and other lands administered by the Forest Service, of maximum economy in harvesting timber and at the same time meet the needs for other protection, management, and utilization purposes (a) with appropriated funds (b) by requirements on purchasers of national forest timber and other products with provisions for amortization of road costs, (c) by cooperation with public and private agencies or persons, or (d) by a combination of these methods. Where roads of a higher standard than that needed in harvesting timber and other products are to be constructed, purchasers of national forest timber and other products would not be required to bear any part of the cost necessary to meet such higher standard and the Secretary would be authorized to make appropriate arrangements to this end.

5. Direct that all instruments affecting permanent interests in land executed pursuant to the bill would be recorded in the county records and copies of all affecting lands reserved from the public domain would be furnished to the Secretary of the Interior.

6. Authorize the Secretary to require users of the roads under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements. The maintenance to be borne by each user would be proportionate to total use. The Secretary would also be authorized to require users of such roads to reconstruct the same where such reconstruction is needed to accommodate the use. If the required maintenance or reconstruction could not be provided by the user or if the Secretary determined that maintenance or reconstruction by the user would not be practical, the Secretary would be authorized to require the deposit of sufficient funds for such purpose. Deposits made to cover maintenance or reconstruction of roads would go into a fund and would be available until expended to cover the cost of accomplishing the work. Pooling of deposits for work on adjacent and overlapping areas and the use of estimates to determine the cost of performing the work with such deposits would be authorized. Unexpended balances upon accomplishment of the work would be transferred to miscellaneous receipts or refunded as appropriate.

7. Provide that where the agreement under which the United States obtained its rights as to a road provides for delayed pay-

ments, any fees or collections for the use of such a road could be placed in a fund to pay the Government's grantor.

There are administered by the Forest Service 154 national forests, 18 national grasslands, and other administrative units, comprising about 186 million acres of land in 44 States and the Commonwealth of Puerto Rico.

An adequate system of forest development roads and trails connecting with forest highways and other highways is essential to proper management and beneficial use of the lands comprising the national forest system and their resources. The presence or absence of transportation facilities has a direct and controlling influence on all phases of forest land management and utilization. This fact determines the volume of timber that can be marketed, the size, duration, and distribution of timber sales within working circles, and the level of salvage cuttings. It is also a major factor in the level of use made of the recreation, wildlife, and forage resources of these lands. We strongly feel it is essential that an adequate system of forest roads and trails be developed and maintained to serve these lands if they are to provide their proper share to the well being of the Nation.

As of June 30, 1961, there were in the forest development road and trail system about 179,200 miles of roads, and 106,600 miles of trails. It is estimated that the system of forest development roads and trails which will ultimately be needed in order for the national forests to provide on a sustained-yield basis the fullest practicable amount of products and services from their timber, watershed, range, recreation, and wildlife resources will be comprised of about 542,000 miles of forest development roads and about 80,000 miles of trails.

The development program for the national forests which President Kennedy submitted to the Congress on September 21, 1961, proposed for the 10-year period 1963-72 the construction and reconstruction of about 79,400 miles of multipurpose roads and 8,000 miles of trails in addition to supplemental work on roads to be constructed by purchasers of national forest timber and other products.

In order to provide and maintain such an adequate system of forest development roads and trails, it is necessary to have not only the funds to finance them, but also authority to facilitate and make possible effective arrangements for the installation and maintenance of the roads and trails.

In a great many instances, national forest lands are intermingled with lands in one or more non-Federal ownerships. The road or trail system needed in the particular area is one which will serve both the national forest land and the land in non-Federal ownership. Authority which would enable the Secretary of Agriculture to make satisfactory arrangements for the construction and maintenance of roads in these circumstances is one of the keys to the installation and maintenance of a system of roads and trails to adequately serve the national forests.

A similar letter is being sent to the Speaker of the House.

The Bureau of the Budget advises that the enactment of this proposed legislation would be in accord with the President's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 30, 1963.

HON. JENNINGS RANDOLPH,
*Chairman, Subcommittee on Public Roads, Committee on Public Works,
U.S. Senate.*

DEAR SENATOR RANDOLPH: This is in response to your request of July 1, 1963, for a report from this Department on amendments to S. 1147, which were proposed by Mr. Bernard L. Orell on behalf of the National Lumber Manufacturers Association at the hearing conducted by your subcommittee on June 11, 1963. Six proposed amendments were discussed and specific language was recommended on four of these. In setting forth the position of the association the statement discussed in considerable detail the Attorney General's opinion of February 1, 1962, decisions of the Comptroller General in 1960, 1961, and 1962, and this Department's recently issued road regulations. None of the points covered in these is presented by the language in S. 1147. These points are involved in the consideration of this bill only by the introduction of the industry recommended amendments.

The Attorney General's opinion dealt primarily with the question of whether owners of lands within the national forests reserved from the public domain, other than actual settlers, have the right to construct roads across such national forest lands for ingress to and egress from their land, and whether, in granting rights or permission to construct roads across such national forest lands under their discretionary authority, the Secretaries of the Interior and Agriculture may require the applicant to grant to the United States reciprocal rights it needs across the applicant's lands.

The recently issued road regulations are designed to implement existing authorities of the Secretary of Agriculture and the Secretary of the Interior in the light of the interpretations thereof. It would be our intent, however, to apply the principles of these regulations in the exercise of the authority S. 1147 would give to the Secretary of Agriculture to grant road easements across national forest lands—authority which the Secretary of Agriculture does not now have and which does not exist in either Secretary with respect to acquired national forest land. The acquired national forest land is commonly referred to as Weeks law land and is generally situated in the East. We do not believe that S. 1147 should be amended in such a way as to restrict or modify the Attorney General's opinion.

We will comment on the proposed amendments in the order in which they are set forth in Mr. Orell's statement.

1. The first recommends the addition of a sentence at the end of section 2 which would read as follows:

"Such grant may be conditioned upon a valuable consideration not to exceed the fair market value of the easement granted."

In explaining the reason for this proposal, reference is made to a situation where a timber land owner would need a bare land right-of-way of several hundred yards across national forest land and the Forest Service would need an easement across many miles of the applicant's land. The statement explains, "In practical operation this addition would mean that if the Forest Service sought a greater right from the applicant than the applicant sought from the Federal Government, the Forest Service would have to acquire that right by

negotiation or condemnation and not by withholding access from the applicant."

In situations where the value of the right needed by the Government exceeds the value of the right sought by an applicant, we believe it is only fair and proper that the difference in value be paid to the applicant. In developing the recently issued road regulations we construed the Attorney General's opinion as recognizing that the requirements for the granting of reciprocal rights should not be unreasonable.

We are in agreement with the principle of this proposed amendment. Section 212.10(a) of the regulations provides that where the values of the interests needed by the United States exceed those applied for by the applicant, the additional interest required by the United States will be acquired by negotiation or condemnation.

We believe, however, that to incorporate this proposed amendment in statute could properly be considered as unnecessarily restricting the Attorney General's opinion. Therefore we do not recommend the adoption of this amendment.

2 and 3. The second recommended amendment would add to section 2 the following paragraph:

"The Secretary shall promptly grant to an applicant for an easement permission to cross National Forest lands to his own land under such terms and conditions as will protect the rights of the Government and its assigns to use the road built across Government lands upon assuming a proportionate share of the construction thereof."

The third recommended amendment is related to the second and would add to section 2 an additional paragraph as follows:

"Any person who, pursuant to permission granted by appropriate authority, has placed an improvement on National Forest or other lands administered by the Forest Service shall be deemed to have a compensable interest in such improvement."

Our policy under the road regulations is to afford prompt access to those who must cross national forest lands to reach their own. This is in accord with the regulations. Where an application is made for an easement, and negotiations would extend over a considerable period to develop agreement on the terms and conditions under which an easement would be granted, provisions is made for the applicant to have prompt use of the needed access pending final agreement. Where the negotiations lead to agreement the applicant would be granted an easement under terms in accordance with the negotiations and prior agreement which would enable him to recapture proportionate shares of the construction in the event of use of the road by others who had not shared in the construction.

One of the basic things S. 1147 would authorize the Secretary to do would be to grant easements for road rights-of-way. The easements which would be granted by the Secretary under this authority would give to the grantee a right for which he would have to be compensated if that right were taken away from him. Therefore, any applicant who met the requirements as to the granting of reciprocal rights needed by the Government and who made cooperative or other arrangements to qualify himself for an easement would obtain what would amount to a compensable right.

The second and third amendments recommended by the National Lumber Manufacturers Association would amount to a statutory

guarantee of the right of the ingress and egress, with an assurance of having a compensable interest in the right-of-way without regard to whether the applicant had provided the Government with the reciprocal rights which it needs or otherwise qualified for the grant of an easement.

The third amendment is expressed in such broad language as to apply to any person who had placed any improvement upon national forest land for any purpose, even though the improvement was placed there under a revocable permit instead of a permit or easement for a specified period of years or in perpetuity.

The purpose of the second recommended amendment, which would be reinforced by the third recommended amendment, is indicated by Mr. Orell's statement to be to substantially modify the effect of the Attorney General's opinion. This Department recommends that these amendments not be adopted.

4. The fourth amendment is to the effect that if there is disagreement between the owner of the intermingled private lands who is applying to the Forest Service for a road easement across national forest land and from whom the Forest Service is seeking to obtain a road easement as to the values of the respective property rights, the U.S. district courts be authorized to determine the fair market value of the easements. No specific language is recommended to accomplish this.

We understand that there is serious question as to whether such a determination would properly be a judicial act to be performed by the U.S. district courts and therefore do not recommend its adoption.

5. The fifth recommended amendment would modify the proviso at the end of section 4 to read as follows:

"Provided, That where roads of a higher standard than that needed in a particular sale in the harvesting and removal of the timber and other products from lands tributary thereto are to be constructed, the purchasers of National Forest timber and other products shall be required neither to construct that part of the road necessary to meet such higher standard nor to bear any of the cost thereof, and the Secretary is authorized to make such arrangements to this end as may be appropriate."

The question involved in this recommended amendment is (a) whether the Secretary should have authority to require purchasers of national forest timber to construct "maximum economy" roads—that is, roads which will permit maximum economy in harvesting timber from national forest lands tributary to the road and at the same time meet the requirements for protection, development, and management of the tributary national forest lands, and for the utilization of the other resources thereof, or (b) whether the Secretary should be limited to what is his present authority to require purchasers of national forest timber to build only what are known as "prudent operator" roads—that is, roads only to the standard necessary for the operation of the particular timber sale in connection with which the road is built.

We believe we should have authority to require the construction of maximum economy roads and recommend that this amendment not be adopted.

Concern is expressed particularly that small operators would be required to build roads to standards that would exceed their road construction capacity.

Several courses of action are open to a purchaser of national forest timber as to the manner in which the related road construction may be accomplished. The purchaser may construct the road himself. He may contract with a road constructing firm. He may, under the provisions of the act of March 3, 1925, as amended by the act of April 24, 1950 (16 U.S.C. 572), request the Forest Service to perform the road construction work with funds the purchaser would deposit with the Forest Service. We believe this last course, in particular, should be fully recognized as a means of assurance to any prospective timber purchasers that requirements for the construction of maximum economy roads would not place upon them undue burdens beyond their road construction capacities. Full assurance may be obtained by prospective bidders for any timber offering before bids are submitted.

The intent and purpose of the proviso in section 4 are to assure that national forest timber will not pay any part of the road costs beyond that necessary to harvest the national forest timber. We believe this can be worded to make it clear that requirements of timber purchasers to construct maximum economy roads could not have the effect of reducing the 25 percent of national forest receipts paid annually to the States to be expended for roads and schools for the benefit of counties in which national forests are located. We, therefore, recommend that the proviso be amended to read as follows:

"Provided, That where roads of higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the National Forest timber and other products shall not be required to bear that part of the cost necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate."

6. The sixth recommended amendment would deal with the distribution of the road reconstruction costs. No specific language is recommended but it is indicated that the purpose of the proposal would be to have reconstruction costs in most cases proportioned among all users, in the same manner as would the costs of maintenance.

Maintenance is a recurring job and it can be prorated to use. Reconstruction, however, is in many cases a different thing. A road may be serving its present uses adequately, but without any surplus capacity. If an application is received for permission to use this road, the additional use might require a certain amount of reconstruction. Such reconstruction would not be necessary without this additional use. In this circumstance we believe it is only reasonable that the person seeking to make the additional use should bear the entire cost of the reconstruction which his use makes necessary. The present language of section 6 of S. 1147 would permit this. But if the cost of the reconstruction which the additional use made necessary were required to be prorated among all users, those users whose present needs are being fully met without the reconstruction would be required to bear a proportionate part of the reconstruction costs.

We recognize, however, that if there should be two or more applicants for permission to make additional use of an existing road the reconstruction costs made necessary by such additional use should be prorated among the several applicants. Also if road reconstruction becomes necessary in order to continue present use by two or more users the cost of such reconstruction should be shared by such users in proper proportion. This would be the result under the present language of section 6.

We recommend that this amendment not be adopted.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

CHARLES S. MURPHY,
Acting Secretary.



Calendar No. 1110

88TH CONGRESS
2D SESSION

S. 1147

[Report No. 1174]

IN THE SENATE OF THE UNITED STATES

MARCH 19, 1963

Mr. RANDOLPH (by request) introduced the following bill; which was read twice and referred to the Committee on Public Works

JULY 8, 1964

Reported by Mr. RANDOLPH with an amendment

[Omit the part struck through and insert the part printed in italic]

A BILL

To enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Congress hereby finds and declares that the con-
4 struction and maintenance of an adequate system of roads
5 and trails within and near the national forests and other
6 lands administered by the Forest Service is essential if in-
7 creasing demands for timber, recreation, and other uses of
8 such lands are to be met; that the existence of such a system
9 would have the effect, among other things, of increasing the
10 value of timber and other resources tributary to such roads;

1 and that such a system is essential to enable the Secretary of
2 Agriculture (hereinafter called the Secretary) to provide
3 for intensive use, protection, development, and management
4 of these lands under principles of multiple use and sustained
5 yield of products and services.

6 SEC. 2. The Secretary is authorized, under such regula-
7 tions as he may prescribe, subject to the provisions of this
8 Act, to grant permanent or temporary easements for speci-
9 fied periods or otherwise for road rights-of-way (1) over
10 national forest lands and other lands administered by the
11 Forest Service, and (2) over any other related lands with
12 respect to which the Department of Agriculture has rights
13 under the terms of the grant to it.

14 SEC. 3. An easement granted under this Act may be
15 terminated by consent of the owner of the easement, by
16 condemnation, or after a five-year period of nonuse the
17 Secretary may, if he finds the owner has abandoned the
18 easement, make a determination to cancel it. Before the
19 Secretary may cancel an easement for nonuse the owner of
20 such easement must be notified of the determination to cancel
21 and be given, upon his request made within sixty days after
22 receipt of the notice, a hearing in accordance with such rules
23 and regulations as may be issued by the Secretary.

24 SEC. 4. The Secretary is authorized to provide for the
25 acquisition, construction, and maintenance of forest develop-

1 ment roads within and near the national forests and other
2 lands administered by the Forest Service in locations and
3 according to specifications which will permit maximum econ-
4 omy in harvesting timber from such lands tributary to such
5 roads and at the same time meet the requirements for pro-
6 tection, development, and management thereof, and for utili-
7 zation of the other resources thereof. Financing of such
8 roads may be accomplished (1) by the Secretary utilizing
9 appropriated funds, (2) by requirements on purchasers of
10 national forest timber and other products, including provi-
11 sions for amortization of road costs in contracts, (3) by co-
12 operative financing with other public agencies and with
13 private agencies or persons, or (4) by a combination of these
14 methods: *Provided, That where roads of a higher standard*
15 *than that needed in the harvesting and removal of the timber*
16 *and other products from lands tributary thereto are to be*
17 *constructed, the purchasers of national forest timber and other*
18 *products shall not be required to bear that part of the costs*
19 *necessary to meet such higher standard and the Secretary*
20 *is authorized to make such arrangements to this end as may*
21 *be appropriate. That where roads of a higher standard*
22 *than that needed in the harvesting and removal of the timber*
23 *and other products covered by the particular sale are to be*
24 *constructed, the purchaser of the national forest timber and*
25 *other products shall not be required to bear that part of the*

88TH CONGRESS
2D SESSION

S. 1147

[Report No. 1174]

A BILL

To enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

By Mr. RANDOLPH

MARCH 19, 1963

Read twice and referred to the Committee on Public Works

JULY 8, 1964

Reported with an amendment

Digest of CONGRESSIONAL PROCEEDINGS

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OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

Washington, D. C. 20250

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HIGHLIGHTS: Senate began debate on poverty bill. Senate passed forest-roads bill. Sen. Yarborough supported ARA programs. Sen. Pearson praised ICC for improved wheat transportation. Sen. Church inserted memo from Continental Grain Co. advocating sale of wheat to Russia. Sen. Pearson criticized International Coffee Agreement. Sen. Randolph inserted Secretary Freeman's W. Va. speech. Senate passed Irish Potato futures bill. House passed Alaska relief bill.

SENATE

1. POTATOES; COMMODITY EXCHANGE. Passed with amendment S. 332, to prohibit trading in Irish potato futures on commodity exchanges. Agreed to the Muskie amendment exempting futures initiated before enactment of the legislation if they do not mature more than 12 months after enactment.
pp. 15848, 15853-62
2. FOREST ROADS. Passed as reported S. 1147, to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests. pp. 15862-5

3. POVERTY. Under the authority of the order of the Senate of July 8, 1964, the Committee on Labor and Public Welfare submitted a report to accompany S. 2642, the poverty bill. p. 15796
Sen. Humphrey inserted an editorial criticizing Sen. Goldwater's views on the poverty bill. p. 15835
Began debate on S. 2642, the poverty bill, and made this the unfinished business. pp. 15865-73
Sen. Young of N. Dak. submitted an amendment, intended to be proposed by him, to S. 2642. p. 15797
4. RIVER BASINS. Sen. Moss submitted an amendment, intended to be proposed by him, to S. 1658, to authorize, construct, operate, and maintain the Central Arizona project, Arizona, New Mexico. p. 15797
5. AREA REDEVELOPMENT. Sen. Yarborough praised ARA programs and inserted a series of articles. pp. 15800-803
6. WHEAT. Sen. Pearson praised ICC for the improved situation in the transportation of wheat at harvest time. p. 15805
Sen. Church inserted a memorandum from the Continental Grain Co. setting forth the advantages of sales of agricultural products to Soviet bloc countries. pp. 15805-6
7. FISCAL POLICY. Sen. Mansfield praised the President's fiscal policies and inserted an editorial. p. 15813
8. ECONOMY. Sen. Young of Ohio urged continuing vigilance in Government economy. p. 15813
9. NATIONAL PARKS. Sen. Douglas urged passage of S. 2249, to provide for the establishment of the Indiana Dunes National Lakeshore, and inserted an article supporting his views. pp. 15814-5
10. LIVESTOCK. Sen. Yarborough inserted a letter he wrote to the Subcommittee on Agricultural Appropriations calling for continuation of the screwworm eradication program. pp. 15842-3
11. COFFEE. Sen. Pearson called for rejection of H.R. 8864, to carry out the obligations of the United States under the International Coffee Agreement, and cited the Agreement's detrimental effects on the United States. p. 15843
12. RURAL DEVELOPMENT. Sen. Randolph described Secretary Freeman's tour of W. Va. and inserted the Secretary's speech about the development of rural America. pp. 15845-8

HOUSE

13. NATIONAL PARKS. At the request of Rep. Gross, passed over without prejudice H.R. 5886, to put into statutory form certain policies which have heretofore been followed by the National Park Service in administering concessions within units of the national park system and in writing contracts for concessionaire services there. pp. 15875-6

Commodity Exchange Authority, and seek to have the regulatory body cure the abuses?

Offhand, I should say that my good friend from Maine is in the position of a doctor who, when he found the patient had a cold in his head, instead of trying to treat the cold, would cut the man's head off. Is it necessary to abolish trading in futures in order to remove abuses? There are abuses on the New York Stock Exchange; but Congress established the Securities and Exchange Commission to prevent certain abuses. We did not put the New York Stock Exchange out of business. Nor do we intend to do so.

Mr. MUSKIE. To use another figure of speech, if I were to follow the course of action suggested by the Senator from Illinois, I would be in the position of locking the barn door after the horse had been stolen. It does no good for a potato farmer in Maine to prove someone guilty of a violation of law and have a fine imposed or a prison sentence imposed, if there is such a penalty, when the damage to his market has been done. I emphasize again that what we are talking about is trading in Maine potatoes, not Illinois potatoes.

Mr. DOUGLAS. I understand.

Mr. MUSKIE. Not Florida, not New York, not Long Island, not California, not Idaho, but Maine potatoes.

Mr. DOUGLAS. I understand.

Mr. MUSKIE. This market is so small that it is subject, in an exaggerated way, to some of the consequences which I have tried to spell out this afternoon.

If trade in Maine potatoes is so beneficial as to suggest that the Maine farmers should bear the burden of the abuses which follow the penalties laid down by law, why do not other potato growers in other parts of the country also resort to trading on the exchange? Why are not their potatoes traded on the exchange?

Mr. DOUGLAS. Let me say to my good friend the Senator from Maine, in reply to the first part of his statement, that while it is true that a fine upon traders who violate the Commodity Exchange Act does not immediately benefit the Maine grower of potatoes, it does act as a deterrent against future illegal and improper acts.

I believe that there may be involved in this action the whole question of trading in futures on farm commodities.

I know that it is easy for people who suffer from price fluctuations to blame the traders rather than to blame the relative elasticity of demand. Most farm commodities are subject to what the economists call the inelasticity of demand, where an increase in a given percent in quantity results in a far greater relative decrease in unit price, so that the farmers as a whole receive less for producing more.

This is one of the innate difficulties in the farm situation with which we have tried to wrestle for over 30 years.

I should prefer to see the problem attacked from this angle, rather than to try to prohibit trading in futures, a practice which certainly performs, in general, an economic function to protect the farmers against fluctuations in prices. I

believe in a greater stabilization of farm prices. I do not believe that trading in futures unstabilizes prices, although there may have been cases of short selling. It is due more to the inelastic demand and the fact that slight fluctuations in production can produce a great fluctuation in unit price. But the farmers then blame the commodity exchanges.

I believe in the regulation of the commodity exchanges. I thought that we had a fairly satisfactory law and a fairly satisfactory regulatory body. If we have not, I would certainly be in favor of making more stringent laws which would provide for a better authority. But to prohibit trading in futures seems to me to be like breaking a thermometer in order to try to prevent the temperature from rising.

I shall not press this issue any further. I believe that the Senator from Maine has the votes on this point. My State is really not economically involved. I am not directly involved in this problem so far as any material or political influences are concerned. I am however somewhat distressed by the obvious error which Congress is taking. In 1958, we prohibited trading in futures on onions, and now we are prohibiting the trading in futures on potatoes.

What will be next? Apples? Eggs? Butter? Cases can be made in connection with all of them.

I am afraid that we may have allowed ourselves to be influenced by current prejudices not founded on facts.

Mr. MUSKIE. I thank the Senator from Illinois.

Mr. President, what is the pending question?

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Maine [Mr. MUSKIE].

The amendment was agreed to.

Mr. HRUSKA. Mr. President, I ask unanimous consent that permission may be granted to the Senator from New York [Mr. JAVITS] to file a statement on the pending measure at this point in the RECORD.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

STATEMENT BY SENATOR JAVITS ON BILL TO PROHIBIT POTATO FUTURES TRADING IN IRISH POTATOES (S. 332)

There have been many arguments offered in favor of and against this measure which prohibits futures trading in Irish potatoes, and I think it is important that we realize that there are two sides to this difficult issue and not just one.

As a Senator from New York, I am naturally greatly concerned that S. 332 would have the effect of abolishing potato futures trading on the New York Mercantile Exchange and would thus do away with the major portion of the operations of a significant New York institution. The New York Mercantile Exchange, a nonprofit membership corporation, has been in existence in the State of New York since 1872. I could hardly allow the pending measure, which has support in my State among a number of potato growers, to be enacted without expressing this deep concern over the effect it will have on the New York Mercantile Exchange.

The major objections to potato futures trading as expressed by the proponents of this bill are generally as follows: (1) that

futures market deals in only a very small part of actual potato production and is used largely for speculation; (2) since it deals in a commodity which is perishable, prices established on this market will frequently be influenced by factors other than supply and demand; (3) that futures trading is the cause of price fluctuations in the potato industry and that use of futures trading has tended to distort the orderly marketing of potatoes from Maine. As my colleagues know, New York has a substantial potato industry, and I have always been concerned with the stability and growth of this market. My interest in the welfare of my State's potato growers, I believe, is fully equal to the Senator from Maine's interest in the welfare of Maine potato growers. If the trading in potato futures does, in fact, have a harmful effect on the potato industry, I would certainly not want to encourage this harmful effect, but I do want to make it clear that there are many agricultural experts who feel that basic problems in the potato industry are not attributable to trading in potato futures.

The New York Mercantile Exchange provides three important functions for the potato industry. First, it provides a trading place and facilities for a continuous market every business day of the year. Second, it is argued that potato growers, dealers, and processors of potatoes may shift part of their risk of price changes in potatoes by hedging operations on the exchange and thus permit them to operate on narrower margins. This may provide consumers with potatoes and potato products at somewhat lower costs. Third, there is, of course, opportunity for speculation on the exchange but is subject to strict regulation under the Commodity Exchange Act by the Commodity Exchange Authority of the Department of Agriculture, which supervises the operation of the exchanges. Legislation has recently been introduced on behalf of the administration to improve the effectiveness of regulatory supervision over the commodity exchanges.

The record of hearings which the Committee on Agriculture conducted on S. 332 is filled with testimony of agricultural experts who state that a harmful effect on potato futures is created by trading on futures exchange. For example, Assistant Prof. Raymond Goldberg, of the Harvard School of Graduate Business Administration, testified before the committee that "all economic evidence from impartial sources who have analyzed the futures activities of this exchange (the New York Mercantile Exchange) have been unanimous in the conclusion that the futures market has been a beneficial marketing tool for the whole potato industry and its market structure." With respect to the argument that potato futures trading causes harmful price fluctuation, Prof. C. D. Kearn, professor of agricultural economics, New York State College of Agriculture, Cornell University, was one of many experts who stated before the Agriculture Committee that if farmers and traders have ready access to a futures market, unwarranted fluctuations would be eliminated. He stated that: "The idea put forward that the presence of a well-recognized and widely used market, such as is found for potatoes, will be the cause of potato price fluctuation is amusing. * * * A trader on the futures market, whether he be a farmer or otherwise, who feels that the price of the commodity is too high or too low, can shift his position too readily to let the price get out of line. The awareness of all such traders as to the probabilities of the supply and demand situation is enough to keep any individual or group of individuals from getting away from the price that the actual conditions dictate. Informed buyers and sellers have access to a widely used market where they have the opportunity of expressing themselves in buying and selling create price stability."

Similarly, with respect to the effect of potato futures trading on prices, Dr. Charles H. Merchant, former professor and head of the Department of Agricultural Business at the University of Maine stated: "A comparison was made of cash prices of potatoes for the past six seasons at Cleveland, Boston, and Presque Isle with similar prices on the New York market. The price relationships are practically identical for each of the six seasons * * * For these seasons the average price differential between Presque Isle street price and Boston was 66 cents per hundredweight, and from Presque Isle to New York 105 cents per hundredweight, and from Presque Isle to Cleveland 160 cents per hundredweight. These differences amounted to approximately the freight rate and marketing charges from Presque Isle to the respective markets. While there was some variation in price differential between markets from week to week, the differences were very small. When the price changed in one market, nearly an equal change occurred at other markets and at Presque Isle. Therefore, whatever the influence the New York Mercantile Exchange may have had on the cash potato market in New York was simultaneously reflected to other markets in the Northeast."

On this point, Secretary of Agriculture Freeman on July 21, 1961, wrote House Agriculture Committee Chairman COOLEY concerning legislation similar to S. 332 introduced in the 87th Congress that "Even though there is a wide variation in the prices of Maine potatoes from season to season and within a particular market season, price fluctuations do not appear to be increased by futures trading. The average prices received by farmers for Maine potatoes generally fluctuates no more than the prices of potatoes produced in other States which are not trading on futures market. The prohibition of futures trading could not be expected to eliminate these wide price movements which are inherent in the marketing of a commodity having, as does potatoes, an inelastic demand and substantial variations in the size of the crop from year to year."

By his letter of August 27, 1963, to the chairman of the Senate Agriculture Committee on S. 332 Secretary of Agriculture Freeman wrote the following:

"The exchange generally appears to perform satisfactorily in crystalizing market information and in disseminating futures price quotations which furnish a basis for cash trading. Expressions of many persons familiar with the Maine potato industry indicate that this might be done as well at country shipping points in spot bargaining between buyers and sellers. On the question of price, it is not clear that either longrun price changes or shortrun changes would be greatly altered if there were no trading in potato futures. But many of those engaged in growing and handling Maine potatoes feel that the exchange disrupts orderly marketing by encouraging growers to hold potatoes until late in the season thus abandoning early season markets to other producing areas."

The President's message on agriculture transmitted to the Congress on January 31, 1964, recognized the value of the concept of regulated futures trading, in stating that: "Trading in futures contracts on commodity exchanges is an old and valuable method of providing essential pricing service to farmers, processors, and handlers. When adequately policed and protected, it is an essential means of shielding producers from the hazards of major price fluctuations."

I am aware that a great many potato growers in my State are in favor of abolishing the trading of potato futures, and I am sympathetic to their concerns. On the other hand, I believe it should be made clear that there are substantial arguments in favor of the continued operation of the potato future

exchanges as demonstrated by the extensive evidence presented to the Agriculture Committee by experts in this field during hearings on S. 332. In view of the fact that the administration has introduced S. 2859, legislation to improve regulatory machinery under the Commodity Exchange Act, I believe it would be more prudent for the Congress to consider the question of abolishing trading in Irish potato futures on commodity exchanges after the adequacy of existing or improved regulation of these markets is fully considered.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 332) was passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) no contract for the sale of Irish potatoes for future delivery shall be made on or subject to the rules of any board of trade in the United States. Notwithstanding the foregoing sentence, futures trading in Irish potatoes shall be permitted in the case of any future with respect to which trading has been initiated on or before the date of enactment of this Act, but in no event shall such trading be permitted in the case of any future which would mature more than twelve calendar months after the calendar month in which this Act is enacted. The terms used in this Act shall have the same meaning as when used in the Commodity Exchange Act.

(b) Any person who shall violate the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than \$5,000.

Mr. MUSKIE. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. MANSFIELD. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONSTRUCTION AND MAINTENANCE OF ADEQUATE SYSTEM OF ROADS AND TRAILS FOR THE NATIONAL FORESTS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1110, the bill S. 1147, and that it be made the pending business.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1147) to enable the Secretary of

Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Public Works, with an amendment on page 3, line 14, after the word "Provided," to strike out "That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products from lands tributary thereto are to be constructed, the purchasers of national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard and the Secretary is authorized to make such arrangements to this end as may be appropriate." and insert "That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriated."; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services.

SEC. 2. The Secretary is authorized, under such regulations as he may prescribe, subject to the provisions of this Act, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way (1) over national forest lands and other lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

SEC. 3. An easement granted under this Act may be terminated by consent of the owner of the easement, by condemnation, or after a five-year period of nonuse the Secretary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within sixty days after receipt of the notice, a hearing in accordance with such rules and regulations as may be issued by the Secretary.

SEC. 4. The Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Serv-

ice in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof, and for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of national forest timber and other products, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriated.

SEC. 5. Copies of all instruments affecting permanent interests in land executed pursuant to this Act shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from the public domain shall be furnished to the Secretary of the Interior.

SEC. 6. The Secretary may require the user or users of a road under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a road to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

SEC. 7. Whenever the agreement under which the United States has obtained for the use of, or in connection with, the national forests and other lands administered by the Forest Service a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

Mr. METCALF. Mr. President, the bill before the Senate is an administration bill. It was introduced to clarify some of the regulations and laws relating to forest access roads. For many years there was an Attorney General's opinion which provided that the administration could not have access to private property in some of the checkerboard

claims in the western part of the United States, including the State of Montana.

Senators will recall that when the land grants were made to the railroads and other corporations, alternate sections were granted. Many of the claims provide for ownership of alternate sections of the Forest Service, and the sections in between are owned by the Northern Pacific Railroad, the Anaconda Co. in Montana, and other companies. So there is a great problem of access to private landholdings, and a problem of access to Federal land ownership.

Recently the Attorney General issued an opinion that provided for reciprocity in granting claims to access to various lands and reciprocity in easements. The bill before the Senate is to implement the Attorney General's opinion so as to carry out the reciprocity which the Attorney General provided.

When the bill was sent to Congress, it contained many meritorious provisions to which both lumbermen and the Forest Service agreed.

During the course of the hearings the timber users and lumbermen came in with a series of amendments that would have changed the whole complexion of the proposed legislation. Those amendments came somewhat as a surprise to the subcommittee which was holding the hearings. It came somewhat as a surprise to the administration, I believe.

Subsequent hearings were held. At those hearings conservationist groups complained that the amendments submitted by the lumbermen would interfere with the development of recreation and recreational resources.

The Senator from Oregon [Mr. MORSE] submitted some suggested amendments which he proposed to substitute in lieu of the amendments submitted by the timber users and the lumbermen's association. But he submitted them to be used only in the event that the committee considered the amendments submitted by the timbermen and the lumbermen's association.

After consideration, first by the subcommittee, and finally by the full committee, it was decided to recommend only the bill that was sent to the Congress by the administration, and which had the approval of both the Forest Service and the lumber users. The committee decided to adopt the bill which would clarify the Attorney General's opinion and then let the administrative function take place. We would then rely upon Executive orders to take care of the further suggestions propounded by both the timber users and the conservationists.

That is the bill which is before the Senate. It has the unanimous approval of the Forest Service. It has the approval of the timber users and the lumbermen's association. It would help them. It would not go as far as they would like to go, but the bill would clarify certain reciprocal programs that are necessary to carry out the provisions of the Attorney General's opinion. The bill has universal support.

The report of the committee is, of course, the report of the chairman. It is a report which, had I been chairman

of the committee, I would not have written. However, it directs the Forest Service to do some of the things that were included in the amendments which were proposed by the lumbermen's association, and directs the attention of the Forest Service to some of the abuses in the operation that have taken place.

In my opinion the language of the report is somewhat too strong. But the report of the committee is the report of the chairman. It is not the report of all members of the committee. It is necessary in the report, and it is necessary in the consideration of the proposed legislation, to direct the attention of the Forest Service to certain abuses in which they have participated—and the Forest Service is not completely innocent in its administration of this legislation.

Therefore, I am in complete accord with the objectives of the bill. I am in complete accord with the language of the bill and the amendment which has been included in it. I feel that perhaps the language of the report directed to the correction of abuses is necessary.

Mr. MORSE. Mr. President, will the Senator yield?

Mr. METCALF. I am glad to yield to the Senator from Oregon, who has cooperated so thoroughly, who has shown such a profound knowledge of the proposed legislation, and who has been so helpful in working out this problem.

Mr. MORSE. Mr. President, I highly commend the Senator from Montana [Mr. METCALF] for the very able leadership he has given to the Senate and to the committee in handling the bill through the committee. I also compliment the efforts of the subcommittee chairman [Mr. RANDOLPH] for his diligent work on this legislation. The Senator from Montana [Mr. METCALF] has given an accurate report as to what the bill would accomplish, and he has given an accurate report with regard to the history of the bill.

Simply stated, the bill would in no way change the objectives and principles of the Attorney General's opinion which was handed down some time ago. That opinion, in effect, brought the policies of the Forest Service in line with the policies of the Bureau of Land Management, which have existed for many years, and have dealt with the question of access roads. The Policies give assurance that when Federal timber is landlocked by private timber, the Federal Government will have access to the Federal timber, and when private timber is landlocked by the Federal Government, the private owners will have access to their timber. That in effect and in essence is what the Attorney General's opinion has accomplished. In his opinion he has merely brought the policies of the Forest Service in line with the policies of the Bureau of Land Management, and in effect he has stated that, as a matter of law, the parties involved in any of the access roads disputes have a legal right. That is the essence of the Attorney General's opinion.

I agree with the Senator from Montana that the report of the chairman of the committee goes further than is nec-

essary. For legislative history, let me say that the course is not binding upon the Forest Service, but is a recommendation to the Forest Service. But I also want the Forest Service to understand—and I am sure the Senator from Montana will agree with the senior Senator from Oregon—that the timber people, the conservationists, the timber users, need have no concern about the continued interest of the Senator from Montana and the Senator from Oregon and the members of the committee in seeing to it that no wrong is done by not carrying out the policies of the Attorney General's opinion. We always stand ready and willing to see to it that equity and justice are done to them.

The Senator from Montana and I opposed the amendments offered by the timber companies because we could not read those amendments without reaching the conclusion that they would have the effect of undermining, and in my opinion emasculating, the opinion of the Attorney General, and all the work that had been accomplished by the Department of Justice in bringing the two great departments of the Government that have jurisdiction over timber; namely, the Forest Service and the Bureau of Land Management—into a common access road policy would have gone in vain.

I congratulate the committee. I wish particularly to congratulate the Senator from Montana for the excellent work he has done in connection with the bill. And I believe that the chairman of the Public Works Committee [Mr. McNAMARA] and the Senator from West Virginia [Mr. RANDOLPH] deserve congratulations for bringing this bill to a vote.

Mr. METCALF. I am very grateful to the Senator from Oregon for his comment. The question of access roads in timber areas of the West, especially, involves not merely getting timber out from private lands and from national forest lands, but such roads are useful for fire control, for access to dam sites and mineral sites, and primarily for recreational purposes. Hunters and fishermen by the thousands use these timber roads for access to national forests for recreational purposes.

The pending bill protects the multi-use concept for national forests in connection with timber production, lumber production, minerals, power, and especially recreation.

We have not lost sight of the fact made by our friends in the conservation movements that these roads are needed for conservation purposes in order to preserve for tourists and others the hunting and fishing that are so important to the economy of our Western States and forests—almost as important as the production of timber itself.

So we have carried out the concept of the Attorney General's opinion. We have provided reciprocal access for private and public forest lands. We have provided in the bill for access for recreational purposes.

We have served a warning—by this report, which, as I have said, is a little too strong—to the Forest Service that it carry out some of the provisions contained in the proposed amendments

wanted by the lumber users association and correct some of the abuses within the organization.

The Senator from Oregon [Mr. MORSE] and I and the chairman will pay continued attention in future sessions of the Congress to see that these matters are carried out.

I join the Senator from Oregon in complimenting the senior Senator from West Virginia [Mr. RANDOLPH] and the senior Senator from Michigan [Mr. McNAMARA] for their attention, their work, and their development of a new concept of access roads in the national forests.

Mr. RANDOLPH. Mr. President, from the Committee on Public Works we reported S. 1147, a bill to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests.

The measure was requested in an executive communication of January 10, 1963, and I introduced it in the Senate on March 19, 1963. The principal feature of the legislation is that it would authorize the Secretary of Agriculture to grant temporary and permanent easements over national forest lands and other lands administered by the U.S. Forest Service. The bill was the subject of extensive hearings by the committee on June 11, 1963, and July 31, 1963. Frequent consultations with representatives of the U.S. Forest Service, the forest products industry, and conservation and recreation groups were held subsequent to the hearings. Also, committee members, including the chairman of the Subcommittee on Public Roads, consulted with other western Senators who are not members of the Committee on Public Works, but who are intensely interested in and knowledgeable on matters relating to the forest products industry.

As chairman of the Subcommittee on Public Roads I wish to commend and express appreciation for the conscientious and cooperative efforts of my esteemed committee colleague, the junior Senator from Montana [Mr. METCALF] in connection with our joint attempt to resolve the problems related to this measure. In a similar spirit, I acknowledge my gratitude to the able senior Senator from Oregon [Mr. MORSE] for his thoughtful consultation on the bill and for his valuable suggestions regarding general problems of access and the development of roads on the national forests.

The question may occur to some Members of this body as to why it is necessary or desirable for the Secretary of Agriculture to grant permanent easements over national forest land. Why may not easements be limited to 40 or 50 years and made renewable at their date of expiration, if necessary? A brief summary of the landownership patterns prevailing in our national forests will, I believe, answer this question.

There are under the administration of the Forest Service approximately 186 million acres of land in 44 States and in the Commonwealth of Puerto Rico, of which about 181.5 million acres are in national forests. The major portion of national forest lands, about 160 million acres, are lands which were withdrawn

from the public domain, while the remaining lands were largely acquired subsequent to enactment of the Weeks law in 1911, or were acquired by exchange.

Within the exterior boundaries of the national forest are some 38 million acres of land in private ownership, much of it in the Western States falling in a typical checkerboard pattern of alternating square mile sections of private and Federal ownership. This pattern, as Members know, resulted from the railroad grants of alternating sections in the latter part of the 19th century.

The sections remaining in the public domain, after the railroad grants, frequently became a part of the national forests as the national forests were subsequently established by withdrawal of lands from the public domain, while the railroad lands passed into diverse private ownership. Though the checkerboard pattern is typical only of the Western States, intermingled ownership is common on the national forests of the Eastern and Southern States as well.

Prior to 1962 owners of intermingled lands were regarded as having statutory assurance of ingress and egress to and from their lands by reason of the provisions of the act of June 4, 1897. In 1962 the Attorney General ruled that there was no such right vested in owners of intermingled lands other than "actual settlers." This ruling is not at issue in the pending legislation.

However, the Attorney General's opinion, coupled with the Department of Agriculture's lack of legislative authority to grant permanent easements across national forest lands for a private timber grower to reach his own lands, gave rise to an additional set of problems in negotiating the right-of-way agreements so vital to the long-term management and harvesting of the timber resources of the national forests.

One of the important provisions of S. 1147 is that it would enable the Secretary of Agriculture to grant permanent access rights across national forest lands to private landowners. This is a just and much-needed provision. For the Forest Service is under obligation to the public to obtain permanent access across private lands to reach intermingled national forest lands. And private landowners and timber growers, who are engaged in the same kind of long-term management on a sustained yield basis as is the Government, also require the same assured access to their lands as the Forest Service does to national forest lands.

S. 1147 will overcome that problem and provide at least a partial answer to several other longstanding problems stemming from intermingled ownership within the national forests.

It should be the long-range objective of the Federal Government to provide prompt access for everyone. The Federal Government has the right of condemnation where needed. Owners of intermingled private lands should also be assured of prompt access under reasonable conditions which protect the interests of the Government. The pending measure and the regulations of the Forest Service provide such conditions and protection, and S. 1147 also provides for the termination

of the easement for reasons of nonuse. Additional benefits accrue to the general public in that this measure, by providing for greater access, will further open up national forest lands for recreational uses.

Several amendments to the bill were proposed by the forest products industry. Forest Service representatives expressed agreement regarding the objectives of two of these amendments and offered a substitute amendment for a third, this substitute having been adopted by the committee. With regard to the other amendments, the Forest Service testified that administrative regulations would offer more flexible means of accomplishing the same goals. The Committee on Public Works has accepted the suggestions of the Forest Service on these matters. But the committee has noted that should subsequent experience demonstrate that additional legislation is needed to assure fair and equitable solutions to right-of-way problems in connection with the administration of the national forests, it is prepared to consider legislative solutions.

Mr. President, S. 1147 offers a fair and equitable solution to a longstanding problem regarding the administration of our national forests and the utilization of our natural resources. It will cost the Government nothing, and in the long run will save the Government money by facilitating cost-share agreements on road construction between the Government and private landowners. And finally, it will be a step forward in creating greater access to national forests for the benefit of the general public. I, therefore, strongly urge the Senate to pass the bill as amended.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. METCALF. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DISCLOSURE OF FINANCIAL INTEREST—JURISDICTION OF COMMITTEE ON RULES AND ADMINISTRATION—POSTPONEMENT OF CONSIDERATION OF SENATE RESOLUTION 337 AND SENATE RESOLUTION 338

Mr. MANSFIELD. Mr. President, it is with regret that I announce to the Senate that Senate Resolution 337 and Senate Resolution 338, both reported from the Rules Committee, will not be called up this afternoon. Senate Resolution 337 is a resolution to provide disclosure of financial interest and to enumerate cer-

tain prohibited activities. Senate Resolution 338 is a resolution amending rule XXV of the standing rules of the Senate relative to the jurisdiction of the Committee on Rules and Administration.

The reason why I regretfully announce the postponement of consideration of these resolutions, which will be brought up later in the session, is that certain key Members are absent at the moment and were unable, because of circumstances over which they had little or no control, to be present at this time.

Had I known about it yesterday, I would not have announced that these resolutions would be taken up. But I assure the Senate that they will be taken up this session, before Congress adjourns sine die.

I would hope that it would be the practice of Senators to be prepared on any day from now on to face any legislation which the leadership may feel constrained to call up. The calendar is fairly clear. There is not too much in the way of legislative proposals listed. All of those which are listed have a "hold" on them or are being held back for some reason or another.

Mr. DIRKSEN. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. DIRKSEN. There are key members of the Rules Committee on both sides of the aisle who found it impossible to get back to Washington. I have been on the long-distance telephone. I know the majority leader has been most diligent in hoping they would reach here in time at least to start discussion of the two proposed amendments to the rules, but frankly, it is impossible to bring them here.

I am happy indeed that the majority leader has seen fit to lay the resolutions aside until they return to the Capitol.

Mr. MANSFIELD. It is my understanding that certain commitments have been made to various Members of the Senate that they would be given more notice than they had yesterday. Therefore, such commitments will be honored.

ECONOMIC OPPORTUNITY ACT OF 1964

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1111, S. 2642.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 2642) to mobilize the human and financial resources of the Nation to combat poverty in the United States.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Public Welfare with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Economic Opportunity Act of 1964".

Findings and Declaration of Purpose

SEC. 2. Although the economic well-being and prosperity of the United States have

progressed to a level surpassing any achieved in world history, and although these benefits are widely shared throughout the Nation, poverty continues to be the lot of a substantial number of our people. The United States can achieve its full economic and social potential as a nation only if every individual has the opportunity to contribute to the full extent of his capabilities and to participate in the workings of our society. It is, therefore, the policy of the United States to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity for education and training, the opportunity to work, and the opportunity to live in decency and dignity. It is the purpose of this Act to strengthen, supplement, and coordinate efforts in furtherance of that policy.

TITLE I—YOUTH PROGRAMS

Part A—Job Corps

Statement of Purpose

SEC. 101. The purpose of this part is to prepare for the responsibilities of citizenship and to increase the employability of young men and young women aged sixteen through twenty-one by providing them in rural and urban residential centers with education, vocational training, useful work experience, including work directed toward the conservation of natural resources, and other appropriate activities.

Establishment of Job Corps

SEC. 102. In order to carry out the purposes of this part, there is hereby established within the Office of Economic Opportunity (hereinafter referred to as the "Office"), established by title VI, a Job Corps (hereinafter referred to as the "Corps").

Job Corps Program

SEC. 103. The Director of the Office (hereinafter referred to as the "Director") is authorized to—

(a) enter into agreements with any Federal, State, or local agency or private organization for the establishment and operation, in rural and urban areas, of conservation camps and training centers and for the provision of such facilities and services as in his judgment are needed to carry out the purposes of this part, including but not limited to agreements with agencies charged with the responsibility of conserving, developing, and managing the public natural resources of the Nation and of developing, managing, and protecting public recreational areas, whereby the enrollees of the Corps may be utilized by such agencies in carrying out, under the immediate supervision of such agencies, programs planned and designed by such agencies to fulfill such responsibility, and including agreements for a botanical survey program involving surveys and maps of existing vegetation and investigations of the plants, soils, and environments of natural and disturbed plant communities;

(b) arrange for the provision of education and vocational training of enrollees in the Corps: *Provided*, That, where practicable such programs may be provided through local public educational agencies or by private vocational educational institutions or technical institutes where such institutions or institutes can provide substantially equivalent training with reduced Federal expenditures;

(c) provide or arrange for the provision of programs of useful work experience and other appropriate activities for enrollees;

(d) establish standards of safety and health for enrollees, and furnish or arrange for the furnishing of health services; and

(e) prescribe such rules and regulations and make such arrangements as he deems necessary to provide for the selection of enrollees and to govern their conduct after enrollment, including appropriate regulations as to the circumstances under which enrollment may be terminated.

Composition of the Corps

SEC. 104. (a) The Corps shall be composed of young men and young women who are permanent residents of the United States, who have attained age sixteen but have not attained age twenty-two at the time of enrollment, and who meet the standards for enrollment prescribed by the Director. Participation in the Corps shall not relieve any enrollee of obligations under the Universal Military Training and Service Act (50 U.S.C. App. 451 et seq.). Only in exceptional cases shall enrollees in the Corps be graduates of an accredited high school, and no person shall be accepted for enrollment in the Corps unless the local school authorities have concluded that further school attendance by such person in any regular academic, vocational, or training program, is not practicable.

(b) In order to enroll as a member of the Corps, an individual must agree to comply with rules and regulations promulgated by the Director for the government of the Corps.

(c) The total enrollment of any individual in the Corps shall not exceed two years except as the Director may determine in special cases.

Allowance and Maintenance

SEC. 105. (a) Enrollees may be provided with such living, travel, and leave allowances, and such quarters, subsistence, transportation, equipment, clothing, recreational services, medical, dental, hospital, and other health services, and other expenses as the Director may deem necessary or appropriate for their needs. Transportation and travel allowances may also be provided, in such circumstances as the Director may determine, for applicants for enrollment to or from places of enrollment, and for former enrollees from places of termination to their homes.

(b) Upon termination of his or her enrollment in the Corps, each enrollee shall be entitled to receive a readjustment allowance at a rate not to exceed \$50 for each month of satisfactory participation therein as determined by the Director: *Provided, however*, That under such circumstances as the Director may determine a portion of the readjustment allowance of an enrollee not exceeding \$25 for each month of satisfactory service may be paid during the period of service of the enrollee directly to a member of his or her family (as defined in section 609(c)) and any sum so paid shall be supplemented by the payment of an equal amount by the Director. In the event of the enrollee's death during the period of his or her service, the amount of any unpaid readjustment allowance shall be paid in accordance with the provisions of section 1 of the Act of August 3, 1950 (5 U.S.C. 61f).

Application of Provisions of Federal Law

SEC. 106. (a) Except as otherwise specifically provided in this part, an enrollee shall be deemed not to be a Federal employee and shall not be subject to the provisions of laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(b) Enrollees shall be deemed to be employees of the United States for the purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and of title II of the Social Security Act (42 U.S.C. 401 et seq.), and any service performed by an individual as an enrollee shall be deemed for such purposes to be performed in the employ of the United States.

(c) (1) Enrollees under this part shall, for the purposes of the administration of the Federal Employees' Compensation Act (5 U.S.C. 751 et seq.), be deemed to be civil employees of the United States within the meaning of the term "employee" as defined

in section 40 of such Act (5 U.S.C. 790) and the provisions thereof shall apply except as hereinafter provided.

(2) For purposes of this subsection:

(A) The term "performance of duty" in the Federal Employees' Compensation Act shall not include any act of an enrollee—
(i) while on authorized leave or pass; or
(ii) while absent from his or her assigned post of duty, except while participating in an activity authorized by or under the direction or supervision of the Corps.

(B) In computing compensation benefits for disability or death under the Federal Employees' Compensation Act, the monthly pay of an enrollee shall be deemed to be \$150, except that with respect to compensation for disability accruing after the individual concerned reaches the age of twenty-one, such monthly pay shall be deemed to be that received under the entrance salary for GS-2 under the Classification Act of 1949 (5 U.S.C. 1071 et seq.), and section 6(d)(1) of the former Act (5 U.S.C. 756(d)(1)) shall apply to enrollees.

(C) Compensation for disability shall not begin to accrue until the day following the date on which the enrollment of the injured enrollee is terminated.

(d) An enrollee shall be deemed to be an employee of the Government for the purposes of the Federal tort claims provisions of title 28, United States Code.

(e) Personnel of the uniformed services who are detailed or assigned to duty in the performance of agreements made by the Director for the support of the Corps shall not be counted in computing strengths under any law limiting the strength of such services or in computing the percentage authorized by law for any grade therein.

State-Operated Youth Camps

SEC. 107. The Director is authorized to enter into agreements with States to assist in the operation or administration of State-operated programs which carry out the purpose of this part. The Director may, pursuant to such regulations as he may adopt, pay part or all of the operative or administrative costs of such programs.

Part B—Work-training programs

Statement of Purpose

SEC. 111. The purpose of this part is to provide useful work experience opportunities for unemployed young men and young women, through participation in State and community work-training programs, so that their employability may be increased or their education resumed or continued and so that public agencies and private nonprofit organizations will be enabled to carry out programs which will permit or contribute to an undertaking or service in the public interest that would not otherwise be provided, or will contribute to the conservation and development of natural resources and recreational areas.

Development of Programs

SEC. 112. In order to carry out the purposes of this part, the Director shall assist and cooperate with State and local agencies and private nonprofit organizations in developing programs for the employment of young people in State and community activities hereinafter authorized, which, whenever appropriate, shall be coordinated with programs of training and education provided by local public educational agencies.

Financial Assistance

SEC. 113. (a) The Director is authorized to enter into agreements providing for the payment by him of part or all of the cost of a State or local program submitted hereunder if he determines, in accordance with such regulations as he may prescribe, that—

(1) enrollees in the program will be employed either (A) on publicly owned and operated facilities or projects, or (B) on local

projects sponsored by private nonprofit organizations, other than projects involving the construction, operation, or maintenance of so much of any facility used or to be used for sectarian instruction or as a place for religious worship;

(2) the program will increase the employability of the enrollees by providing work experience and training in occupational skills or pursuits in classifications in which the Director finds there is a reasonable expectation of employment, or will enable student enrollees to resume or to maintain school attendance;

(3) the program will permit or contribute to an undertaking or service in the public interest that would not otherwise be provided, or will contribute to the conservation, development, or management of the natural resources of the State or community or to the development, management, or protection of State or community recreational areas;

(4) the program will not result in the displacement of employed workers or impair existing contracts for services;

(5) the rates of pay and other conditions of employment will be appropriate and reasonable in the light of such factors as the type of work performed, geographical region, and proficiency of the employee;

(6) to the maximum extent feasible, the program will be coordinated with vocational training and educational services adapted to the special needs of enrollees in such program and sponsored by State or local public educational agencies: *Provided, however*, That where such services are inadequate or unavailable, the program may make provision for the enlargement, improvement, development, and coordination of such services with the cooperation of, or where appropriate pursuant to agreement with, the Secretary of Health, Education, and Welfare; and
(7) the program includes standards and procedures for the selection of applicants, including provisions assuring full coordination and cooperation with local and other authorities to encourage students to resume or maintain school attendance.

(b) In approving projects under this part, the Director shall give priority to projects with high training potential.

Enrollees in Program

SEC. 114. (a) Participation in programs under this part shall be limited to young men and women who are permanent residents of the United States, who have attained age sixteen but have not attained age twenty-two, and whose participation in such programs will be consistent with the purposes of this part.

(b) Enrollees shall be deemed not to be Federal employees and shall not be subject to the provisions of laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(c) Where appropriate to carry out the purposes of this Act, the Director may provide for testing, counseling, job development, and referral services to youths through public agencies or private nonprofit organizations.

Limitations on Federal Assistance

SEC. 115. Federal assistance to any program pursuant to this part paid for the period ending two years after the date of enactment of this Act, or June 30, 1966, whichever is later, shall not exceed 90 per centum of the costs of such program, including costs of administration, and such assistance paid for periods thereafter shall not exceed 50 per centum of such costs, unless the Director determines, pursuant to regulations adopted and promulgated by him establishing objective criteria for such determinations, that assistance in excess of such percentages is required in furtherance

88TH CONGRESS
2D SESSION

S. 1147

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 1964

Referred to the Committee on Public Works

AN ACT

To enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Congress hereby finds and declares that the con-
4 struction and maintenance of an adequate system of roads
5 and trails within and near the national forests and other
6 lands administered by the Forest Service is essential if in-
7 creasing demands for timber, recreation, and other uses of
8 such lands are to be met; that the existence of such a system
9 would have the effect, among other things, of increasing the
10 value of timber and other resources tributary to such roads;

1 and that such a system is essential to enable the Secretary of
2 Agriculture (hereinafter called the Secretary) to provide
3 for intensive use, protection, development, and management
4 of these lands under principles of multiple use and sustained
5 yield of products and services.

6 SEC. 2. The Secretary is authorized, under such regula-
7 tions as he may prescribe, subject to the provisions of this
8 Act, to grant permanent or temporary easements for speci-
9 fied periods or otherwise for road rights-of-way (1) over
10 national forest lands and other lands administered by the
11 Forest Service, and (2) over any other related lands with
12 respect to which the Department of Agriculture has rights
13 under the terms of the grant to it.

14 SEC. 3. An easement granted under this Act may be
15 terminated by consent of the owner of the easement, by
16 condemnation, or after a five-year period of nonuse the
17 Secretary may, if he finds the owner has abandoned the
18 easement, make a determination to cancel it. Before the
19 Secretary may cancel an easement for nonuse the owner of
20 such easement must be notified of the determination to cancel
21 and be given, upon his request made within sixty days after
22 receipt of the notice, a hearing in accordance with such rules
23 and regulations as may be issued by the Secretary.

24 SEC. 4. The Secretary is authorized to provide for the
25 acquisition, construction, and maintenance of forest develop-

1 ment roads within and near the national forests and other
2 lands administered by the Forest Service in locations and
3 according to specifications which will permit maximum econ-
4 omy in harvesting timber from such lands tributary to such
5 roads and at the same time meet the requirements for pro-
6 tection, development, and management thereof, and for utili-
7 zation of the other resources thereof. Financing of such
8 roads may be accomplished (1) by the Secretary utilizing
9 appropriated funds, (2) by requirements on purchasers of
10 national forest timber and other products, including provi-
11 sions for amortization of road costs in contracts, (3) by co-
12 operative financing with other public agencies and with
13 private agencies or persons, or (4) by a combination of these
14 methods: *Provided*, That where roads of a higher standard
15 than that needed in the harvesting and removal of the timber
16 and other products covered by the particular sale are to be
17 constructed, the purchaser of the national forest timber and
18 other products shall not be required to bear that part of the
19 costs necessary to meet such higher standard, and the Secre-
20 tary is authorized to make such arrangements to this end as
21 may be appropriate.

22 SEC. 5. Copies of all instruments affecting permanent
23 interests in land executed pursuant to this Act shall be re-
24 corded in each county where the lands are located. Copies
25 of all instruments affecting interests in lands reserved from

1 the public domain shall be furnished to the Secretary of the
2 Interior.

3 SEC. 6. The Secretary may require the user or users of
4 a road under the control of the Forest Service, including
5 purchasers of Government timber and other products, to
6 maintain such roads in a satisfactory condition commensu-
7 rate with the particular use requirements of each. Such
8 maintenance to be borne by each user shall be proportion-
9 ate to total use. The Secretary may also require the user
10 or users of such a road to reconstruct the same when such
11 reconstruction is determined to be necessary to accommodate
12 such use. If such maintenance or reconstruction cannot be
13 so provided or if the Secretary determines that maintenance
14 or reconstruction by a user would not be practical, then the
15 Secretary may require that sufficient funds be deposited by
16 the user to provide his portion of such total maintenance or
17 reconstruction. Deposits made to cover the maintenance or
18 reconstruction of roads are hereby made available until
19 expended to cover the cost to the United States of accom-
20 plishing the purposes for which deposited: *Provided*, That
21 deposits received for work on adjacent and overlapping areas
22 may be combined when it is the most practicable and
23 efficient manner of performing the work, and cost thereof
24 may be determined by estimates: *And provided further*,
25 That unexpended balances upon accomplishment of the

1 purpose for which deposited shall be transferred to miscel-
2 laneous receipts or refunded.

3 SEC. 7. Whenever the agreement under which the
4 United States has obtained for the use of, or in connection
5 with, the national forests and other lands administered by
6 the Forest Service a right-of-way or easement for a road or
7 an existing road or the right to use an existing road provides
8 for delayed payments to the Government's grantor, any fees
9 or other collections received by the Secretary for the use of
10 the road may be placed in a fund to be available for making
11 payments to the grantor.

Passed the Senate July 21, 1964.

Attest:

FELTON M. JOHNSTON,

Secretary.

AN ACT

To enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

JULY 22, 1964

Referred to the Committee on Public Works

Digest of CONGRESSIONAL PROCEEDINGS

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

Washington, D. C. 20250

Official Business

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U. S. Department of Agriculture

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HIGHLIGHTS: See page 4.

SENATE

1. SUGAR; TARIFFS. Passed with amendments H. R. 12253, to amend certain of the tariff schedules (pp. 22503-4, 22507-21, 22522-24, 22526-36, 22538-41). Conferees were appointed (p. 22541). House conferees have not yet been appointed.

Agreed to the following amendments:

By Sen. Bennett (for himself and several other Senators), 37 to 23, to extend the foreign quota provisions of the Sugar Act until June 30, 1965, to leave the fee on the global sugar quota intact at the full rate, and keep the fee on statutory sugar quotas applicable from Jan. 1 to June 30, 1965 at 30 percent of the full rate on global sugar, and to permit domestic beet and mainland cane sugar areas to market up to 275,000 tons of beet and 225,000 tons of cane, respectively, of the extra sugar produced at Government request in 1963, but which they are now unable to market without congressional action. pp. 22508-21, 22522-24, 22526-32

By Sen. Williams, Del., to permit the manufacture of polyhydric alcohols from sugar. p. 22511

Rejected the following amendment:

- By Sen. Inouye, 27 to 34, to strike out the provision in the Bennett amendment which would permit domestic beet and mainland cane sugar areas to market additional sugar. pp. 22516-21, 22522-24
2. SUPPLEMENTAL APPROPRIATION BILL, 1965. Began debate on the bill, H. R. 12633. pp. 22541-44
 3. LANDS. Passed without amendment H. R. 6218, to authorize additional extensions of time for final proof by certain entrymen under the desert land laws and to make such additional extensions available to the successors in interest of the entrymen. This bill will now be sent to the President. p. 22544
 4. COTTON ALLOTMENTS; ESTES. Sen. McClellan submitted for printing the report of the Permanent Subcommittee on Investigations, "Department of Agriculture Handling of Pooled Cotton Allotments of Billie Sol Estes" (S. Rept. 1607). p. 22476
 5. PERSONNEL; PAY. Received the report of the Joint Committee on Reduction of Nonessential Federal Expenditures on Federal employment and pay for August 1964. pp. 22476-80
 6. MARKETING. Sen. Hart expressed regret that action has not been taken to enact truth-in-packaging legislation this congress. pp. 22494-5
 7. DISASTER RELIEF; LOANS. Sen. Bartlett commended Federal and private assistance given to Alaska as a result of damage caused by the earthquake, including assistance by this Department in relieving liability in certain cases of REA and FHA loans in Alaska. pp. 22487-95
 8. NATURAL RESOURCES. Sen. Metcalf inserted the comparative voting records of President Johnson, when he was a Member of the Senate, and Sen. Goldwater, on conservation, recreation, and resource development legislation. pp. 22497-500
 9. EDUCATION. Sen. Morse inserted a summary prepared by the Office of Education of the contents of the conference version of S. 3060, the National Defense Education Act Amendments, including assistance to schools in federally impacted areas. pp. 22501-03
 10. FEDERAL SPENDING. Sen. Long, La., inserted an article reviewing the President's efforts to reduce Federal expenditures, "Tight Fist and Open Mind." p. 22544
 11. CONSERVATION. Sen. Brewster commended the conservation measures passed by this Congress and inserted an editorial, "The Conservation Congress." p. 22552
 12. LEGISLATIVE PROGRAM. Sen. Mansfield listed a number of measures still to be considered this session of Congress and suggested the possibility of recessing Congress this Sat. until after the Nov. elections. pp. 22536-8

HOUSE

13. FOREST ROADS. The Public Works Committee reported with amendment S. 1147, to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests (H. Rept. 1920). p. 22472

ROADS AND TRAILS SYSTEM FOR NATIONAL FORESTS

SEPTEMBER 30, 1964.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FALLON, from the Committee on Public Works, submitted the following

REPORT

[To accompany S. 1147]

The Committee on Public Works, to whom was referred the bill (S. 1147) to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF BILL

S. 1147 is addressed to a number of matters related to roads and trails within and adjacent to the national forests and other lands administered by the Forest Service. The bill provides specific authority to the Secretary of Agriculture to grant easements for road rights-of-way over such lands and means by which such easements may be terminated. The bill provides for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service and authorizes four specific methods of financing such roads and their maintenance and reconstruction commensurate with their use. The bill also makes provision for recording, in the county where the affected land is situated, all instruments affecting permanent interests in land executed under the authority conferred by the bill. Finally, the bill provides for establishment of a fund into which any fees collected from users of a road may be placed for subsequent payment whenever the terms of a grant to the United States of a right-of-way or easement call for delayed payment to the grantor.

NEED FOR THE BILL

Landownership within the national forests

The national forests and national grasslands encompass approximately 186 million acres of land in 44 States and in the Commonwealth of Puerto Rico, of which about 181.5 million acres are in national forests. The major portion of national forests, 160 million acres, are lands which were withdrawn from the public domain, while the remainder are lands acquired under the act of March 1, 1911 (36 Stat. 961, 16 U.S.C. 513-519 (the Weeks law)) or acquired by exchange or other means.

With the exterior boundaries of the national forests there are some 38 million acres of land in private ownership. In many of the Western States, it is common to find square mile sections of land in alternating private and Federal ownership in a typical checkerboard pattern, a pattern resulting from the railroad land grants made in the latter part of the 19th century.

The sections remaining in the public domain frequently became a part of the national forests as the national forests were subsequently established by withdrawal of lands from the public domain, while the railroad lands passed into diverse private ownership.

While the checkerboard pattern of mixed ownership is typical only of some of the Western States, private inholdings within the external boundaries of the national forests exist also in the forest lands acquired under the Weeks law. In the State of West Virginia, for example, 835,606 acres are in private ownership within the exterior boundaries of the national forests while 806,375 acres are administered by the U.S. Forest Service. In the State of North Carolina there are 1,741,679 acres of private land inside the national forest boundaries where 1,079,144 acres of public land are administered by the Forest Service. And in the State of Kentucky, 899,524 acres, of private land exist within the boundaries of the national forests which otherwise comprise only 457,561 acres of federally owned land.

As of June 30, 1963, the entire area of 186 million acres administered by the Forest Service was served by 186,241 miles of roads and 104,522 miles of trails in the forest development system. It is estimated that when completely installed, this system will consist of 542,250 miles of access roads and that the trail network will have been reduced to 80,000 miles.

Rights of ingress and egress

Although the Secretary of Agriculture was given statutory authority (act of February 1, 1905, 33 Stat. 628, 16 U.S.C. 551) to administer the national forests at the time Congress transferred jurisdiction from the Department of Interior to the Department of Agriculture, the act has not been construed as including the power to grant easements across national forest lands. Moreover, by letter between the Secretaries of Agriculture and Interior dated June 8, 1905 (33 L.D. 609-610), the two Secretaries agreed that the Secretary of Agriculture would not make grants which would amount to easements burdening the lands held in the ownership of the United States. Thus, from the very inception of administration of the national forests by the Secretary of Agriculture, he has lacked explicit authority to grant ease-

ments across national forest lands; nor has the Secretary assumed that such authority was implicit in his responsibility for administering national forests.

Owners of land within the exterior boundaries of the national forests, however, were until recently regarded as having statutory assurance of ingress and egress to and from their lands by reason of the provisions of the act of June 4, 1897 (30 Stat. 36, 16 U.S.C. 478). These rights were evidenced upon application therefor by instruments issued by the Forest Service entitled "Stipulations Governing the Exercise of the Right of Ingress and Egress." More commonly, however, rights to cross national forest lands were made in the form of special use permits. Such permits allowed the applicant to cross national forest lands upon compliance with specified terms and conditions and with the applicable administrative regulations of the Department of Agriculture, and were made expressly revocable at any time. The Secretary of Agriculture did not condition in any way the rights of persons owning lands within the exterior boundaries of the national forests to cross national forest lands to reach their property in view of what was regarded as a statutory right of ingress and egress.

Present national forest rights-of-way policy

On February 1, 1962, the Attorney General of the United States, in response to questions directed to him by letter from the Secretary of Agriculture dated August 2, 1961, held that the act of June 4, 1897 (32 Stat. 36, 16 U.S.C. 478), was no barrier to the Secretary's conditioning—

the grant of a right to use existing or to construct new roads on national forest lands on the grant by the applicant of a reciprocal right to the United States.

The Attorney General also held, however, that the act would prohibit so conditioning the right of ingress and egress of actual settlers residing within the boundaries of national forests over already existing roads.

Following the Attorney General's opinion, the Forest Service drafted and circulated for review regulations governing the granting of access across the national forests. The proposed regulations met with considerable objection on a variety of issues from owners holding lands within or adjacent to national forests. These regulations subsequently were revised and promulgated by the Secretary of Agriculture on June 10, 1963.

Forest Service experience both before and after February 1, 1962, in acquiring and negotiating for needed rights-of-way furnishes ample evidence that most right-of-way negotiations, particularly when the Forest Service seeks rights to use existing access roads which are on private lands and which have been built at private expense, raises complex problems. Some of these are:

1. Difficulties in agreeing on valuation of the interest which the Forest Service seeks to acquire; these difficulties turn principally on: (a) determinations of timber volumes to be moved over the particular road systems, (b) estimating replacement costs of the roads involved, and (c) the extent of the interest being acquired by the Forest Service for the United States.

2. Extent of rights to reimbursement for road segments already built or to be built by one party on land of the other.

3. Questions of whether any share of construction and maintenance costs for the roads should be borne by users other than timber haulers.

4. The extent of control of other uses and individual users which will be vested in either party alone, and the extent of Forest Service control over the grantor and his uses.

5. Availability of appropriated funds for use in condemnation proceedings if and when negotiations fail.

But the most significant barrier to the entering of voluntary exchanges of rights-of-way between private landowners and the Forest Service since February 1, 1962, has been the inability of the Forest Service, through the Secretary of Agriculture, to grant permanent easements. In view of the holding by the Attorney General that the act of June 4, 1897 (30 Stat. 36, 16 U.S.C. 478), was not to be construed as a statutory guarantee of access to private lands within the national forests, private landowners assert it is imperative because of their long-range forest management needs and large capital investments in roads that they receive permanent access rights from the Forest Service, particularly when they are asked to give such rights to the United States to serve virtually identical long-range management needs.

The Forest Service has attempted since February 1962, to utilize provisions of the act of March 3, 1899 (30 Stat. 1233, 16 U.S.C. 525), as the basis for furnishing permanent rights, which are referred to as being "in the nature of easements."¹ That act, however, says nothing about the nature of any right to be conferred under its authority. Enough doubt has been expressed about the nature of the right conferred² so that a considerable number of landowners have either refused to accept instruments issued under authority of this statute or have reluctantly accepted them in exchange for permanent easements which they have granted to the United States. Furthermore, the statute is construed to apply only to those portions of the national forests which were withdrawn from the public domain and were originally under the jurisdiction of the Secretary of the Interior. Millions of acres of national forest lands were purchased or were acquired otherwise than by withdrawal, particularly in the Appalachian region, and thus do not fall within the purview of the statute. Lastly, it is not satisfactory from an administrative standpoint for the Secretary of Agriculture, who is vested with authority and responsibility for administering the national forests, to have to apply to the Secretary of Interior in a large number of the cases where the Secretary of Agriculture desires to grant a right-of-way across national forest lands.

The foregoing discussion summarizes the access conditions prevailing in the national forests at the time S. 1147 was referred to the committee.

¹ The act says:

"In the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any national forest when in his judgment the public interests will not be injuriously affected thereby."

² See, e.g., "Report of the Committee on Timber and Vegetative Resources," 1963 Committee Reports of the American Bar Association, Section of Mineral and Natural Resources Law, pp. 137-144.

HEARINGS

Hearings were held by the Subcommittee on Roads on September 30, 1964, on S. 1147 and similar bills, H.R. 1900, introduced by Representative Charles A. Buckley, of New York, chairman of the committee; H.R. 1901, introduced by Representative Harold T. Johnson, of California; and H.R. 1902, introduced by Representative John J. McFall, of California. At that time testimony was received from interested witnesses, including representatives of the Department of Commerce and the Department of Agriculture. All witnesses testified in favor of the legislation.

SECTION-BY-SECTION ANALYSIS

Section 1 contains a declaration of policy underlying the development and administration of an adequate system of multiple-use roads and trails within and near the national forests and other lands administered by the Forest Service.

Section 2 gives the Secretary of Agriculture authority to grant easements for road rights-of-way over national forests and other lands administered by the Forest Service. There are nearly 40 million acres of land in non-Federal ownership within the exterior boundaries of the national forests. Much of this is managed for timber production. The timber harvested from it must in many instances be hauled out over national forest land. This section also enables persons needing to haul products across acquired national forest land to obtain easements, whereas they can only obtain revocable permits at the present time. The section will be of material benefit to those needing to haul their products over national forest land. It will materially facilitate our negotiations for rights-of-way needed by the Forest Service where the landowner needs a right-of-way across the national forest.

Section 2 also authorizes easements to be granted for road rights-of-way over other lands with respect to which the Department of Agriculture has rights under the terms of the grant to it. There are many segments of roads constructed by the Forest Service on rights-of-way obtained by it over lands in non-Federal ownership. In many instances the road would serve both the national forest and the non-Federal land within the national forest. In such instances the private landowner would want to obtain the right to use the portion of the road constructed by the Forest Service across the non-Federal land as well as the portion of the road constructed on national forest land. This section enables such persons to obtain a grant from the Secretary of Agriculture for the right to use the road for its full length.

Section 3 would provide for the termination or cancellation of an easement granted by the Secretary under the act. A significant provision is that, before an easement would be canceled for nonuse, the owner would be notified and would be given an opportunity for a hearing. It is desirable that there be authority to cancel easements which have in fact been abandoned. At the same time it is recognized that, in many instances, roads used primarily in connection with the harvesting of timber are not used every year because the need for them may be in connection with periodic cuttings. Such roads should

not be considered as having been abandoned in between cuttings. Adequate protection is given to the owner of such roads in these circumstances.

Section 4 of the bill permits the Secretary to provide for construction of access roads to a standard which will serve the long-term needs of all national forest users. These roads are called "maximum economy" roads. The section provides for financing the construction of such roads through use of (1) appropriated funds, (2) requirements on purchasers of national forest timber and other products, (3) cooperative financing with other public agencies and private parties or (4) a combination of these methods. There is a proviso in the section that if a road is to be built to a standard higher than needed for removal of timber or other products from a particular sale, that neither the timber nor other products shall bear any of the costs attributable to the higher standard.

Under its existing statutory authority to sell timber, the Forest Service may not require a purchaser of Federal timber as an incident of his timber purchase contract to build a road to a standard higher than necessary for harvesting the timber involved in the particular sale. Nor may the excess cost of such higher standard road be charged against the timber sold, even if the purchaser agreed to build it. Roads which a prudent operator would deem necessary to harvest timber in a particular sale are called "prudent operator" roads.

Particularly since the passage of the Multiple Use-Sustained Yield Act of 1960, act of June 12, 1960 (74 Stat. 215, 16 U.S.C. 528), the Forest Service quite properly in many cases desires to have roads constructed to a standard higher than that necessary to harvest timber, or to harvest timber from a particular sale. Many other users travel over these roads, and roads built to a standard only to accommodate timber from a single initial timber sale may prove inadequate to carry the traffic of all users, or even of subsequent timber sales. Later reconstruction of roads initially constructed to meet needs for a single timber sale is often inefficient and unduly costly. The Forest Service sought authority by section 4 of the bill as initially introduced, both in the House and the Senate, to charge against timber in a particular sale the full cost of a road built to standards which would satisfy anticipated use for all subsequent timber sales, and not just the initial sale.

The amendment to section 4 adopted by the Senate and included in the reported bill makes it clear that purchasers of national forest timber and other forest products will not be required to pay out of their own funds more than the cost of the standard of road needed in the harvesting and removal of the timber and other products covered by the particular sale. Where the sale contract calls for the construction of a higher standard road, that part of the cost necessary to meet such higher standard will be borne by other than the purchaser. The amendment adopted by the Senate also makes it clear that such requirements will not have the effect of reducing the 25 percent of national forest receipts paid annually to the States to be expended for roads and schools for the benefit of the counties in which the national forests are located.

The proviso to section 4 which was adopted by the Senate was proposed as a clarifying amendment by the Department of Agriculture.

Acting Secretary of Agriculture, Charles Murphy, in a letter dated July 30, 1963, to the Committee on Public Works of the Senate, stated:

Several courses of action are open to a purchaser of national forest timber as to the manner in which the related road construction may be accomplished. The purchaser may construct the road himself. He may contract with a road constructing firm. He may, under the provisions of the act of March 3, 1925, as amended by the act of April 24, 1950 (16 U.S.C. 572), request the Forest Service to perform the road construction work with funds the purchaser would deposit with the Forest Service. We believe this last course, in particular, should be fully recognized as a means of assurance to any prospective timber purchasers that requirements for the construction of maximum economy roads would not place upon them undue burdens beyond their road construction capacities. Full assurance may be obtained by prospective bidders for any timber offering before bids are submitted.

The intent and purpose of the proviso in section 4 are to assure that national forest timber will not pay any part of the road costs beyond that necessary to harvest the national forest timber. We believe this can be worded to make it clear that requirements of timber purchasers to construct maximum economy roads could not have the effect of reducing the 25 percent of national forest receipts paid annually to the States to be expended for roads and schools for the benefit of counties in which national forests are located.

The substitute proviso put forward by the Department of Agriculture and adopted by the Senate recognizes the broad public need for the construction of access roads within the national forests which are adequate to serve all users of the national forests. At the same time the proviso and the accompanying explanation from the Department of Agriculture protect the interests both of the counties and of timber purchasers.

The overall result of section 4 of S. 1147, consequently, is to revise somewhat the present authority of the Forest Service so as to permit it to design in connection with timber sales not just "prudent operator" roads but "maximum economy" roads. However, to the extent the road design exceeds the prudent operator concept, the additional costs are not chargeable to the particular sale involved, but must come from one or more of the sources enumerated in the second sentence of section 4. The counties' interests are thus met.

So far as timber purchases are concerned, the prudent operator concept is substantially preserved since purchasers will not, according to the proviso and to the assurances of the Department of Agriculture, be required to pay for roads of a higher standard than those required for normal logging. Instead of building such roads, timber purchasers may make deposits with the Forest Service in the amount of the estimated costs for the necessary roads built to prudent operator standards. The Forest Service would then utilize such funds, along with funds from any of the other enumerated sources, to contract the building of the maximum economy road. This option will be available to every purchaser of a timber sale calling for construction of a road ✓

in excess of the prudent operator standard. The interests of timber purchasers are thus met also.

Section 5 provides that permanent easements will be placed of record in the counties in which the lands are located and that copies of instruments affecting public domain lands must be furnished to the Secretary of Interior.

Section 6 authorizes the Secretary to require users of roads under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in satisfactory condition commensurate with the particular use requirements of each. It is made clear that the maintenance to be required of each user shall be proportionate to the total use in order that no user would be required to bear more than his proper share of the maintenance. The Secretary would also be authorized to require users of such roads to reconstruct the roads where such reconstruction is needed to accommodate such use. The section also authorizes the Secretary, if he determines that maintenance or reconstruction by the user would not be practical, to require the user to deposit sufficient funds to enable the Secretary to perform the work. Such deposits would be in an amount needed to cover the proportionate part of the maintenance or reconstruction which the user would otherwise have been required to perform.

At the present time the Secretary has authority to require the user of a road under the jurisdiction of the Forest Service, including purchasers of national forest timber and other products, to perform maintenance and reconstruction. Under existing authority the Forest Service may perform the work for a purchaser through deposits made by the purchaser if he so desires. The Secretary cannot, however, require such purchasers to make such deposits. There are many situations where the road user is not equipped to perform the maintenance or construction work which would be required of him. Also, there are many situations where two or more need to use the same road. In some of such cases it would not be practical to have each user perform a separate part of the maintenance or reconstruction. The authority to require deposits in such situations would enable the Secretary to assure satisfactory and effective performance of the maintenance or reconstruction work.

Under section 7 fees or deposits for the use of any road as to which the Forest Service has obtained its rights under an agreement providing for delayed payments to the Government's grantor would be authorized to be placed in a special account to make such delayed payment. This would include not only road use fee payments made by haulers of timber and other products from non-Federal land but also any deposits which the Secretary might require to be made by purchasers of national forest timber or other products.

COMMITTEE VIEWS

The committee recommends the enactment of S. 1147. This legislation enables the Secretary of Agriculture to accommodate the needs of persons desiring rights-of-way for roads across national forest lands. It also enables the Secretary to more effectively carry out his responsibilities for the development and management of the national forest system under principles of multiple use and sustained yield. It contains adequate safeguards to assure that persons using the forest development roads system will not be unduly burdened.

AGENCY COMMENTS

This legislation was requested by the Department of Agriculture in an executive communication dated January 10, 1963. The executive communication and the favorable comments of the Department of Commerce, as submitted to the chairman of the committee on Public Works of the House of Representatives, on H.R. 1900, H.R. 1901, and H.R. 1902, which are identical to the reported bill, S. 1147, are as follows:

DEPARTMENT OF AGRICULTURE,
Washington, D.C., January 10, 1963.

HON. JOHN W. McCORMACK,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: Transmitted herewith for the consideration of the Congress is a draft bill to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

This Department recommends enactment of the draft bill.

The draft bill is designed to provide to the Secretary of Agriculture certain authorities that are urgently needed and which will be of material aid in constructing and maintaining an adequate system of roads and trails for the national forests and other lands administered by the Forest Service. It specifically would—

1. Set forth findings and declarations of the Congress that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential to provide for intensive use, protection, and management of such lands under principles of multiple use and sustained yield of products and services.

2. Authorize the Secretary of Agriculture to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way over national forest lands and other lands administered by the Forest Service and over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

3. Provide for termination of easements so granted with provision that if cancellation is to be for nonuse the owner must be notified and, if he so requests, be given a hearing in accordance with rules and regulations of the Secretary.

4. Authorize the Secretary to provide for the acquisition, construction, and maintenance of forest development roads, within and near the national forests and other lands administered by the Forest Service, of maximum economy in harvesting timber and at the same time meet the needs for other protection, management, and utilization purposes (a) with appropriated funds, (b) by requirements on purchasers of national forest timber and other products with provisions for amortization of road costs, (c) by cooperation with public and private agencies or persons, or (d) by a combination of these methods. Where roads of a higher standard than that needed in harvesting timber and other products are to be constructed, purchasers of national forest timber and other products would not be required to bear any part of

the cost necessary to meet such higher standard and the Secretary would be authorized to make appropriate arrangements to this end.

5. Direct that all instruments affecting permanent interests in land executed pursuant to the bill would be recorded in the county records and copies of all affecting lands reserved from the public domain would be furnished to the Secretary of the Interior.

6. Authorize the Secretary to require users of the roads under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements. The maintenance to be borne by each user would be proportionate to total use. The Secretary would also be authorized to require users of such roads to reconstruct the same where such reconstruction is needed to accommodate the use. If the required maintenance or reconstruction could not be provided by the user or if the Secretary determined that maintenance or reconstruction by the user would not be practical, the Secretary would be authorized to require the deposit of sufficient funds for such purpose. Deposits made to cover maintenance or reconstruction of roads would go into a fund and would be available until expended to cover the cost of accomplishing the work. Pooling of deposits for work on adjacent and overlapping areas and the use of estimates to determine the cost of performing the work with such deposits would be authorized. Unexpended balances upon accomplishment of the work would be transferred to miscellaneous receipts or refunded as appropriate.

7. Provide that where the agreement under which the United States obtained its rights as to a road provides for delayed payments, any fees or collections for the use of such road could be placed in a fund to pay the Government's grantor.

There are administered by the Forest Service 154 national forests, 18 national grasslands, and other administrative units, comprising about 186 million acres of land in 44 States and the Commonwealth of Puerto Rico.

An adequate system of forest development roads and trails connecting with forest highways and other highways is essential to proper management and beneficial use of the lands comprising the national forest system and their resources. The presence or absence of transportation facilities has a direct and controlling influence on all phases of forest land management and utilization. This fact determines the volume of timber that can be marketed, the size, duration, and distribution of timber sales within working circles, and the level of salvage cuttings. It is also a major factor in the level of use made of the recreation, wildlife, and forage resources of these lands. We strongly feel it is essential that an adequate system of forest roads and trails be developed and maintained to serve these lands if they are to provide their proper share to the well-being of the Nation.

As of June 30, 1961, there were in the forest development road and trail system about 179,200 miles of roads, and 106,600 miles of trails. It is estimated that the system of forest development roads and trails which will ultimately be needed in order for the national forests to provide on a sustained-yield basis the fullest practicable amount of

products and services from their timber, watershed, range, recreation, and wildlife resources will be comprised of about 542,000 miles of forest development roads and about 80,000 miles of trails.

The development program for the national forests which President Kennedy submitted to the Congress on September 21, 1961, proposed for the 10-year period 1963-72 the construction and reconstruction of about 79,400 miles of multipurpose roads and 8,000 miles of trails in addition to supplemental work on roads to be constructed by purchasers of national forest timber and other products.

In order to provide and maintain such an adequate system of forest development roads and trails, it is necessary to have not only the funds to finance them, but also authority to facilitate and make possible effective arrangements for the installation and maintenance of the roads and trails.

In a great many instances, national forest lands are intermingled with lands in one or more non-Federal ownerships. The road or trail system needed in the particular area is one which will serve both the national forest land and the land in non-Federal ownership. Authority which would enable the Secretary of Agriculture to make satisfactory arrangements for the construction and maintenance of roads in these circumstances is one of the keys to the installation and maintenance of a system of roads and trails to adequately serve the national forests.

A similar letter is being sent to the President of the Senate.

The Bureau of the Budget advises that the enactment of this proposed legislation would be in accord with the President's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

GENERAL COUNSEL OF THE
DEPARTMENT OF COMMERCE,
Washington, D.C., April 10, 1963.

HON. CHARLES A. BUCKLEY,
*Chairman, Committee on Public Works,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department concerning H.R. 1900, H.R. 1901, and H.R. 1902, identical bills to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests and for other purposes.

H.R. 1900, H.R. 1901, and H.R. 1902 would authorize the Secretary of Agriculture to grant permanent or temporary easements for road rights-of-way over national forest lands, other lands administered by the Forest Service, and certain related lands. These bills also provide for the termination of such easements, the construction of forest development roads, the recording of certain instruments affecting interests in the lands concerned, and the administration of roads under the control of the Forest Service.

Section 2 of the bills, which would provide the basic authority for the Secretary of Agriculture to grant such easements, does not limit such authority to easements for rights-of-way for any particular category of roads. Since no such category is specified, it would seem that the provisions of this section would be applicable to easements for roads on Federal-aid systems. Under these circumstances, an

alternative to section 317 of title 23, United States Code, entitled "Appropriation for Highway Purposes of Lands or Interest in Lands Owned by the United States," would be available to the States for acquisition of rights-of-way in those cases where certain lands under the jurisdiction of the Department of Agriculture were involved. Other than this effect on Federal-aid highways, these bills deal entirely with the property, jurisdiction, and functions of the Secretary of Agriculture.

Accordingly, the Department of Commerce would defer to the views of the Department of Agriculture concerning H.R. 1900, H.R. 1901, and H.R. 1902.

The Bureau of the Budget advises that there would be no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT E. GILES.

○

Union Calendar No. 819

88TH CONGRESS
2D SESSION

S. 1147

[Report No. 1920]

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 1964

Referred to the Committee on Public Works

SEPTEMBER 30, 1964

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

AN ACT

To enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Congress hereby finds and declares that the con-
4 struction and maintenance of an adequate system of roads
5 and trails within and near the national forests and other
6 lands administered by the Forest Service is essential if in-
7 creasing demands for timber, recreation, and other uses of
8 such lands are to be met; that the existence of such a system
9 would have the effect, among other things, of increasing the
10 value of timber and other resources tributary to such roads;

1 and that such a system is essential to enable the Secretary of
2 Agriculture (hereinafter called the Secretary) to provide
3 for intensive use, protection, development, and management
4 of these lands under principles of multiple use and sustained
5 yield of products and services.

6 SEC. 2. The Secretary is authorized, under such regula-
7 tions as he may prescribe, subject to the provisions of this
8 Act, to grant permanent or temporary easements for speci-
9 fied periods or otherwise for road rights-of-way (1) over
10 national forest lands and other lands administered by the
11 Forest Service, and (2) over any other related lands with
12 respect to which the Department of Agriculture has rights
13 under the terms of the grant to it.

14 SEC. 3. An easement granted under this Act may be
15 terminated by consent of the owner of the easement, by
16 condemnation, or after a five-year period of nonuse the
17 Secretary may, if he finds the owner has abandoned the
18 easement, make a determination to cancel it. Before the
19 Secretary may cancel an easement for nonuse the owner of
20 such easement must be notified of the determination to cancel
21 and be given, upon his request made within sixty days after
22 receipt of the notice, a hearing in accordance with such rules
23 and regulations as may be issued by the Secretary.

24 SEC. 4. The Secretary is authorized to provide for the
25 acquisition, construction, and maintenance of forest develop-

1 ment roads within and near the national forests and other
2 lands administered by the Forest Service in locations and
3 according to specifications which will permit maximum econ-
4 omy in harvesting timber from such lands tributary to such
5 roads and at the same time meet the requirements for pro-
6 tection, development, and management thereof, and for utili-
7 zation of the other resources thereof. Financing of such
8 roads may be accomplished (1) by the Secretary utilizing
9 appropriated funds, (2) by requirements on purchasers of
10 national forest timber and other products, including provi-
11 sions for amortization of road costs in contracts, (3) by co-
12 operative financing with other public agencies and with
13 private agencies or persons, or (4) by a combination of these
14 methods: *Provided*, That where roads of a higher standard
15 than that needed in the harvesting and removal of the timber
16 and other products covered by the particular sale are to be
17 constructed, the purchaser of the national forest timber and
18 other products shall not be required to bear that part of the
19 costs necessary to meet such higher standard, and the Secre-
20 tary is authorized to make such arrangements to this end as
21 may be appropriate.

22 SEC. 5. Copies of all instruments affecting permanent
23 interests in land executed pursuant to this Act shall be re-
24 corded in each county where the lands are located. Copies
25 of all instruments affecting interests in lands reserved from

1 the public domain shall be furnished to the Secretary of the
2 Interior.

3 SEC. 6. The Secretary may require the user or users of
4 a road under the control of the Forest Service, including
5 purchasers of Government timber and other products, to
6 maintain such roads in a satisfactory condition commensu-
7 rate with the particular use requirements of each. Such
8 maintenance to be borne by each user shall be proportion-
9 ate to total use. The Secretary may also require the user
10 or users of such a road to reconstruct the same when such
11 reconstruction is determined to be necessary to accommodate
12 such use. If such maintenance or reconstruction cannot be
13 so provided or if the Secretary determines that maintenance
14 or reconstruction by a user would not be practical, then the
15 Secretary may require that sufficient funds be deposited by
16 the user to provide his portion of such total maintenance or
17 reconstruction. Deposits made to cover the maintenance or
18 reconstruction of roads are hereby made available until
19 expended to cover the cost to the United States of accom-
20 plishing the purposes for which deposited: *Provided*, That
21 deposits received for work on adjacent and overlapping areas
22 may be combined when it is the most practicable and
23 efficient manner of performing the work, and cost thereof
24 may be determined by estimates: *And provided further*,
25 That unexpended balances upon accomplishment of the

1 purpose for which deposited shall be transferred to miscel-
2 laneous receipts or refunded.

3 SEC. 7. Whenever the agreement under which the
4 United States has obtained for the use of, or in connection
5 with, the national forests and other lands administered by
6 the Forest Service a right-of-way or easement for a road or
7 an existing road or the right to use an existing road provides
8 for delayed payments to the Government's grantor, any fees
9 or other collections received by the Secretary for the use of
10 the road may be placed in a fund to be available for making
11 payments to the grantor.

Passed the Senate July 21, 1964.

Attest:

FELTON M. JOHNSTON,

Secretary.

AN ACT

To enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

JULY 22, 1964

Referred to the Committee on Public Works

SEPTEMBER 30, 1964

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

Washington, D. C. 20250

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HIGHLIGHTS: Both Houses concurred in modified supplemental appropriation bill. Both Houses agreed to conference report on foreign aid authorization bill. House concurred in Senate amendments to foreign aid appropriation bill. House passed forest roads and trails bill.

SENATE - Oct. 2

received (H. Rept. 11928) and

1. SUPPLEMENTAL APPROPRIATION BILL, 1965. Both Houses/agreed to the conference report on this bill, H. R. 12633, and acted on all amendments in disagreement, except for one Senate amendment regarding student education loans (pp. 22921-23, 23059-60). Attached to this Digest is a summary table showing items for this Department. The bill also includes items for the National Commission on Food Marketing; National Commission on Technology, automation, and Economic Progress; Office of Water Resources Research; Public Land Law Review Commission; Appalachian Regional Commission; and claims and judgments.

2. FOREIGN AID. Both Houses agreed to the conference report on H. R. 11380, the foreign aid authorization bill (pp. 22765-73, 22847-51). This bill will now be sent to the President. See Digest 189 for items of interest.

Sen. Hayden inserted a table showing foreign aid appropriations for fiscal year 1965. pp. 23074-5

3. NATURAL RESOURCES. Sen. Morse reviewed and criticized the organization of natural resource activities in the Federal Government and urged the establishment of a Department of Natural Resources. pp. 22837-40

4. FARM LABOR. Sen. Kuchel reviewed farm labor problems in Calif. and urged action to extend the Mexican farm labor program. pp. 23075-87

5. CONSERVATION. Sen. Allott commended the enactment of conservation legislation during the 88th Congress and inserted an address by Sen. Hruska supporting conservation measures. p. 22703

6. FOREIGN TRADE. Sen. Mansfield inserted an address by a vice president of Pan American World Airways, "The Fruits of Sound Trade Policies." pp. 22714-6

7. EDUCATION. Agreed to the Conference report on S. 3060, to extend and amend the National Defense Education Act of 1958 and laws providing aid to schools in federally impacted areas. This bill will now be sent to the President. pp. 22728-47

8. ELECTRIFICATION. Sen. Metcalf inserted resolutions of the National Farmers Union supporting water resource development projects and public power projects. pp. 22756-7

9. LEGISLATIVE ACCOMPLISHMENTS. Sens. Mansfield, Javits, and Dirksen inserted summaries of legislative accomplishments, including those relating to agriculture. pp. 22760-1, 23034-9, 23061-69

HOUSE - Oct. 2

10. FOREIGN AID. Concurred in Senate amendments to H. R. 11812, the foreign aid appropriation bill for 1965. This bill will now be sent to the President. pp. 22943-5

11. FOREST ROADS AND TRAILS. Passed without amendment S. 1147, to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests. This bill will now be sent to the President. p. 22866

Mr. BURLESON. Mr. Speaker, in the hope that I might allay some of the questions which some of our colleagues have raised in reference to a change of schedules, I shall be glad to take the responsibility, and to be reminded of it at any time by anyone—I have no doubt my able colleague, the gentleman from Ohio, will keep me reminded, as he does on many things—of bringing any change of these schedules to the floor to advise the membership, and to have advice from the membership on any change which may occur. I hope that will be a satisfactory assurance that we plan no sereptitious action in connection with these provisions which have just been adopted by the House.

Mr. QUIE. Mr. Speaker, will the gentleman yield?

Mr. BURLESON. I yield to the gentleman from Minnesota.

Mr. QUIE. There will be printed, I understand, the schedule which will go into effect because of the passage of the bill. Would the gentleman be willing to have printed in the RECORD any future changes in the schedule which may occur?

Mr. BURLESON. I shall be glad to do that and to discuss the matter on the floor or with any Member personally.

Mr. QUIE. That seems acceptable. Then if any Member does have a criticism, he can go to the Committee on House Administration.

Mr. BURLESON. I regret not having made this statement before the gentleman offered his amendment but was not aware of his purpose at the time.

Mr. QUIE. I thank the gentleman.

EXTENSION OF TIME FOR UNDERTAKING CERTAIN CONSTRUCTION BY THE STATE OF MISSOURI

Mr. FALLON. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 2460) to extend the period of time within which certain construction may be undertaken by the State of Missouri on lands conveyed to such State by the United States.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

Mr. CRAMER. Mr. Speaker, reserving the right to object, the gentleman at the proper time will explain the intent and purpose of the bill, I presume.

I might say that this was voted out of the committee unanimously, so I do not intend to object at this time or at a future time in the consideration of this legislation.

Mr. FALLON. Yes. Will the gentleman yield to me for that purpose?

Mr. CRAMER. I yield to the gentleman from Maryland.

Mr. FALLON. S. 2460 extends the time to the State of Missouri to develop land which they bought from the Federal Government with an agreement to start improvements before July 1964. The time now expires July 13, 1964. This bill extends the time. They had some difficulties in raising money to improve

the lands due to legislative entanglements and bond issues. However, the committee was given the understanding in its hearing that these difficulties have now been ironed out and that the State is ready to proceed with the improvement of these lands this fall.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. CRAMER. I yield to the gentleman from Iowa.

Mr. GROSS. Do I understand correctly that this bill involves no cost to the Federal Government?

Mr. FALLON. The gentleman is correct. No cost at all.

Mr. CRAMER. I will say on this that we are unanimously in favor of it in the committee.

Mr. Speaker, I withdraw my reservation.

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the third paragraph of the Act entitled "An Act to authorize the sale of certain lands to the State of Missouri", approved July 13, 1959 (76 Stat. 181), is amended by striking out "within five years" and inserting in lieu thereof "within ten years".

The bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 9659) was laid on the table.

Mr. HALL. Mr. Speaker, I wish to thank the acting chairman of the Public Works Committee, the gentleman from Maryland [Mr. FALLON], and the chairman of the subcommittee headed by the gentleman from California [Mr. JOHNSON]; and specifically the ranking minority member from California, Mr. JOHN BALDWIN, for bringing this "must" legislation up in the waning days of this Congress, by unanimous consent. In fact, I wish to thank all Members for their forbearance in allowing unanimous-consent consideration of this Department of Army recommended bill, which I first introduced on January 20, 1964, as H.R. 9659. S. 2460 is identical, and was simultaneously—or soon thereafter—introduced in the other body by the senior Senator from Missouri and has passed that body. By this manner of discharging it from the committee and acquiescing today the legislative intent of both bills becomes a reality and the last barrier is removed from a "start" by the State of Missouri and its subcontractors, of a hotel-motel near the southern end of Table Rock Dam in lands heretofore sold to the State of Missouri with provisos concerning actual construction and certain improvements within a given time period.

These bills simply extend for an additional 5 years the time requirements for such construction. As stated before the subcommittee of the House Committee on Public Works in recent hearings, the Corps of Engineers have cooperated, the

Department of Army and the Bureau of the Budget interpose no objection; and there is no expense to the Government while the previously created ARA loan is being implemented and appropriated for, per arrangements by the State of Missouri. The action of the subcommittee and full Committee on Public Works was unanimous, for which I am grateful; and it is estimated that this improvement for the comfort of the great numbers of retirees that are streaming into the Ozarks from throughout the United States and abroad and for those who come for recreation on beautiful Table Rock Lake will be instituted in January of 1966 or soon thereafter.

I appreciate and urge unanimous consideration of this action recommended by the gentleman from Maryland [Mr. FALLON]. I further appreciate the cooperation of majority and minority counsel, the Committee on Public Works, as well as Members on both sides of the aisle who have cooperated in this "must" legislation.

TO CHANGE NAME OF BAY HEAD-MANASQUAN CANAL TO POINT PLEASANT CANAL

Mr. FALLON. Mr. Speaker, I ask unanimous consent for immediate consideration of the bill (S. 2654) to change the name of the canal known as the Bay Head-Manasquan Canal and as the Manasquan River-Barneget Bay Canal to Point Pleasant Canal.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

Mr. CRAMER. Mr. Speaker, reserving the right to object—and I shall not object—could the gentleman explain the bill? As I understand it, this merely is a change in the name of the New Jersey intracoastal waterway to the Point Pleasant Canal. There are no Federal costs involved in it, as it is a change of name only, and the committee is unanimously in favor of it. Is that not correct?

Mr. FALLON. The gentleman is correct.

Mr. CRAMER. I withdraw my reservation.

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the canal known as the Bay Head-Manasquan Canal and as the Manasquan River-Barneget Bay Canal which is located in the Borough of Point Pleasant, New Jersey, shall hereafter be known as Point Pleasant Canal and any law, regulation, document, or record of the United States in which such canal is designated or referred to under the name Bay Head-Manasquan Canal or Manasquan River-Barneget Bay Canal shall be held to refer to such canal under and by the name of Point Pleasant Canal.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AMEND SECTION 14 OF FEDERAL-AID HIGHWAY ACT OF 1954

Mr. FALLON. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 1593) to amend Section 14 of the Federal-Aid Highway Act of 1954 concerning the interstate planning and coordination of the Great River Road.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

Mr. CRAMER. Mr. Speaker, reserving the right to object—and I shall not object—I ask the gentleman if he would explain the purpose of the bill. It, too, was reported unanimously. There are some additional funds involved, but the minority believe they are fully justified.

I yield to the gentleman from Maryland.

Mr. FALLON. Of course, this amends the legislation to increase the funds for the planning of the Great River Road from its initial authorization of \$250,000 to \$500,000.

Mr. CRAMER. Mr. Speaker, I withdraw my reservation.

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 14 of the Federal-Aid Highway Act of 1954 (68 Stat. 70), is hereby amended to read as follows:

"For the purpose of expediting the interstate planning and coordination of a continuous Great River Road and appurtenances thereto traversing the Mississippi Valley from Canada to the Gulf of Mexico in general conformity with the provisions of title 23, United States Code, and with the recommended plan set forth in the joint report submitted to the Congress November 28, 1951, by the Secretaries of Commerce and Interior pursuant to the Act of August 24, 1949 (Public Law 262, Eighty-first Congress), there is hereby authorized to be expended by the Secretary of Commerce from general administrative funds not to exceed \$500,000; the amount expended under this section shall be apportioned among the ten States bordering the Mississippi River on the basis of their relative needs as determined by the Secretary of Commerce."

The bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

ROADS AND TRAILS FOR THE NATIONAL FORESTS

Mr. FALLON. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 1147) to enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

Mr. CRAMER. Mr. Speaker, reserving the right to object—and I shall not object—but just for the purpose of the

record and for the information of the Members of the House, I think it is well to indicate that there are no additional Federal expenditures under this bill, either. The bills being considered today are only bills previously passed by the other body and the Committee on Public Works believes that it is essential they be passed before the close of this session of Congress. This is one of the most meritorious bills. I yield to the gentleman from Maryland [Mr. FALLON] to ask him if he does not concur in that statement and for any further explanation of the bill that he cares to make.

Mr. FALLON. Mr. Speaker, this bill reported by the Public Works Committee is to permit the construction and maintenance of an adequate system of roads and trails in the national forests.

Mr. CRAMER. That is correct. I ask the gentleman if I was not correct when I stated that there are no additional Federal expenditures involved in this legislation?

Mr. FALLON. Not at the present time.

Mr. CRAMER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services.

SEC. 2. The Secretary is authorized, under such regulations as he may prescribe, subject to the provisions of this Act, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way (1) over national forest lands and other lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

SEC. 3. An easement granted under this Act may be terminated by consent of the owner of the easement, by condemnation, or after a five-year period of nonuse the Secretary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within sixty days after receipt of the notice, a hearing in accordance with such rules and regulations as may be issued by the Secretary.

SEC. 4. The Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service in locations and according to specifica-

tions which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof, and for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of national forest timber and other products, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate.

SEC. 5. Copies of all instruments affecting permanent interests in land executed pursuant to this Act shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from the public domain shall be furnished to the Secretary of the Interior.

SEC. 6. The Secretary may require the user or users of a road under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a road to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

SEC. 7. Whenever the agreement under which the United States has obtained for the use of, or in connection with, the national forests and other lands administered by the Forest Service a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

The bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

GRAHAM BURKE PUMPING PLANT

Mr. FALLON. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 2649) to



An Act

78 STAT. 1089.

To enable the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services.

National forests.
Roads and trails
system.

SEC. 2. The Secretary is authorized, under such regulations as he may prescribe, subject to the provisions of this Act, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way (1) over national forest lands and other lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

Easements.
Secretary of
Agriculture,
authority.

SEC. 3. An easement granted under this Act may be terminated by consent of the owner of the easement, by condemnation, or after a five-year period of nonuse the Secretary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within sixty days after receipt of the notice, a hearing in accordance with such rules and regulations as may be issued by the Secretary.

SEC. 4. The Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof, and for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of national forest timber and other products, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate.

Forest develop-
ment roads.

SEC. 5. Copies of all instruments affecting permanent interests in land executed pursuant to this Act shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from the public domain shall be furnished to the Secretary of the Interior.

Instruments,
recording.

Maintenance and
reconstruction
by road users.

SEC. 6. The Secretary may require the user or users of a road under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a road to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

Fund.

SEC. 7. Whenever the agreement under which the United States has obtained for the use of, or in connection with, the national forests and other lands administered by the Forest Service a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

Approved October 13, 1964.

LEGISLATIVE HISTORY:

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